(B) Coinsurance under subchapter XVIII of this chapter (including coinsurance described in section 1395e of this title).

(C) Deductibles established under subchapter XVIII of this chapter (including those described in section 1395e of this title and section 1395l(b) of this title).

(D) The difference between the amount that is paid under section 1395l(a) of this title and the amount that would be paid under such section if any reference to "80 percent" therein were deemed a reference to "100 percent".

Such term also may include, at the option of a State, premiums for enrollment of a qualified medicare beneficiary with an eligible organization under section 1395mm of this title.

(4) Notwithstanding any other provision of this subchapter, in the case of a State (other than the 50 States and the District of Columbia) −

(A) the requirement stated in section 1396a(a)(10)(E) of this title shall be optional, and

(B) for purposes of paragraph (2), the State may substitute for the percent provided under subparagraph (B) (!7) or (!8) 1396a(a)(10)(E)(iii) of this title of such paragraph (!7) any percent.

In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1315 of this title, the Secretary shall require the State to meet the requirement of section 1396a(a)(10)(E) of this title in the same

manner as the State would be required to meet such requirement if the State had in effect a plan approved under this subchapter.

(5)(A) The Secretary shall develop and distribute to States a simplified application form for use by individuals (including both qualified medicare beneficiaries and specified low−income medicare beneficiaries) in applying for medical assistance for medicare cost−sharing under this subchapter in the States which elect to use such form. Such form shall be easily readable by applicants and uniform nationally.

(B) In developing such form, the Secretary shall consult with beneficiary groups and the States.

(6) For provisions relating to outreach efforts to increase awareness of the availability of medicare cost−sharing, see section 1320b−14 of this title.

(q) Qualified severely impaired individual

The term "qualified severely impaired individual" means an individual under age 65 −

(1) who for the month preceding the first month to which this subsection applies to such individual −

(A) received (i) a payment of supplemental security income benefits under section 1382(b) of this title on the basis of blindness or disability, (ii) a supplementary payment under section 1382e of this title or under section 212 of Public Law 93−66 on such basis, (iii) a payment of monthly benefits under section 1382h(a) of this title, or (iv) a supplementary payment under section 1382e(c)(3), and

(B) was eligible for medical assistance under the State plan approved under this subchapter; and

(2) with respect to whom the Commissioner of Social Security determines that −

(A) the individual continues to be blind or continues to have the disabling physical or mental impairment on the basis of which he was found to be under a disability and, except for his earnings, continues to meet all non−disability−related requirements for eligibility for benefits under subchapter XVI of this chapter,

(B) the income of such individual would not, except for his earnings, be equal to or in excess of the amount which would cause him to be ineligible for payments under section 1382(b) of this title (if he were otherwise eligible for such payments),

(C) the lack of eligibility for benefits under this subchapter would seriously inhibit his ability to continue or obtain employment, and

(D) the individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the benefits under subchapter XVI of this chapter (including any federally administered State supplementary payments), this subchapter, and publicly funded attendant care services (including personal care assistance) that would be available to him in the absence of such earnings.

In the case of an individual who is eligible for medical assistance

pursuant to section 1382h(b) of this title in June, 1987, the individual shall be a qualified severely impaired individual for so long as such individual meets the requirements of paragraph (2).

(r) Early and periodic screening, diagnostic, and treatment services

The term "early and periodic screening, diagnostic, and treatment services" means the following items and services:

(1) Screening services −

(A) which are provided −

(i) at intervals which meet reasonable standards of medical and dental practice, as determined by the State after consultation with recognized medical and dental organizations involved in child health care and, with respect to immunizations under subparagraph (B)(iii), in accordance with the schedule referred to in section 1396s(c)(2)(B)(i) of this title for pediatric vaccines, and

(ii) at such other intervals, indicated as medically necessary, to determine the existence of certain physical or mental illnesses or conditions; and

(B) which shall at a minimum include −

(i) a comprehensive health and developmental history (including assessment of both physical and mental health development),

(ii) a comprehensive unclothed physical exam,

(iii) appropriate immunizations (according to the schedule referred to in section 1396s(c)(2)(B)(i) of this title for

pediatric vaccines) according to age and health history,

(iv) laboratory tests (including lead blood level assessment appropriate for age and risk factors), and

(v) health education (including anticipatory guidance).

(2) Vision services −

(A) which are provided −

(i) at intervals which meet reasonable standards of medical practice, as determined by the State after consultation with recognized medical organizations involved in child health care, and

(ii) at such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition; and

(B) which shall at a minimum include diagnosis and treatment for defects in vision, including eyeglasses.

(3) Dental services −

(A) which are provided −

(i) at intervals which meet reasonable standards of dental practice, as determined by the State after consultation with recognized dental organizations involved in child health care, and

(ii) at such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition; and

(B) which shall at a minimum include relief of pain and infections, restoration of teeth, and maintenance of dental

health.

(4) Hearing services −

(A) which are provided −

(i) at intervals which meet reasonable standards of medical practice, as determined by the State after consultation with recognized medical organizations involved in child health care, and

(ii) at such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition; and

(B) which shall at a minimum include diagnosis and treatment for defects in hearing, including hearing aids.

(5) Such other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State plan. Nothing in this subchapter shall be construed as limiting providers of early and periodic screening, diagnostic, and treatment services to providers who are qualified to provide all of the items and services described in the previous sentence or as preventing a provider that is qualified under the plan to furnish one or more (but not all) of such items or services from being qualified to provide such items and services as part of early and periodic screening, diagnostic, and treatment services. The Secretary shall, not later than July 1, 1990, and every 12 months thereafter,

develop and set annual participation goals for each State for participation of individuals who are covered under the State plan under this subchapter in early and periodic screening, diagnostic, and treatment services.

(s) Qualified disabled and working individual

The term "qualified disabled and working individual" means an individual −

(1) who is entitled to enroll for hospital insurance benefits under part A of subchapter XVIII of this chapter under section 1395i−2a of this title;

(2) whose income (as determined under section 1382a of this title for purposes of the supplemental security income program) does not exceed 200 percent of the official poverty line (as defined by the Office of Management and Budget and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved;

(3) whose resources (as determined under section 1382b of this title for purposes of the supplemental security income program) do not exceed twice the maximum amount of resources that an individual or a couple (in the case of an individual with a spouse) may have and obtain benefits for supplemental security income benefits under subchapter XVI of this chapter; and

(4) who is not otherwise eligible for medical assistance under this subchapter.

(t) Primary care case management services; primary care case manager; primary care case management contract; and primary care

(1) The term "primary care case management services" means case−management related services (including locating, coordinating, and monitoring of health care services) provided by a primary care case manager under a primary care case management contract.

(2) The term "primary care case manager" means any of the following that provides services of the type described in paragraph (1) under a contract referred to in such paragraph:

(A) A physician, a physician group practice, or an entity employing or having other arrangements with physicians to provide such services.

(B) At State option −

(i) a nurse practitioner (as described in subsection (a)(21) of this section);

(ii) a certified nurse−midwife (as defined in section 1395x(gg) of this title); or

(iii) a physician assistant (as defined in section 1395x(aa)(5) of this title).

(3) The term "primary care case management contract" means a contract between a primary care case manager and a State under which the manager undertakes to locate, coordinate, and monitor covered primary care (and such other covered services as may be specified under the contract) to all individuals enrolled with the manager, and which −

(A) provides for reasonable and adequate hours of operation, including 24−hour availability of information, referral, and treatment with respect to medical emergencies;

(B) restricts enrollment to individuals residing sufficiently near a service delivery site of the manager to be able to reach that site within a reasonable time using available and affordable modes of transportation;

(C) provides for arrangements with, or referrals to, sufficient numbers of physicians and other appropriate health care professionals to ensure that services under the contract can be furnished to enrollees promptly and without compromise to quality of care;

(D) prohibits discrimination on the basis of health status or requirements for health care services in enrollment, disenrollment, or reenrollment of individuals eligible for medical assistance under this subchapter;

(E) provides for a right for an enrollee to terminate enrollment in accordance with section 1396u−2(a)(4) of this title; and

(F) complies with the other applicable provisions of section 1396u−2 of this title.

(4) For purposes of this subsection, the term "primary care" includes all health care services customarily provided in accordance with State licensure and certification laws and regulations, and all laboratory services customarily provided by or through, a general practitioner, family medicine physician, internal medicine physician, obstetrician/gynecologist, or pediatrician.

(u) Conditions for State plans

(1) The conditions described in this paragraph for a State plan are as follows:

(A) The State is complying with the requirement of section 1397ee(d)(1) of this title.

(B) The plan provides for such reporting of information about expenditures and payments attributable to the operation of this subsection as the Secretary deems necessary in order to carry out the fourth sentence of subsection (b) of this section.

(2)(A) For purposes of subsection (b) of this section, the expenditures described in this subparagraph are expenditures for medical assistance for optional targeted low−income children described in subparagraph (B).

(B) For purposes of this paragraph, the term "optional targeted low−income child" means a targeted low−income child as defined in section 1397jj(b)(1) of this title (determined without regard to that portion of subparagraph (C) of such section concerning eligibility for medical assistance under this subchapter) who would not qualify for medical assistance under the State plan under this subchapter as in effect on March 31, 1997 (but taking into account the expansion of age of eligibility effected through the operation of section 1396a(l)(1)(D) of this title).

(3) For purposes of subsection (b) of this section, the expenditures described in this paragraph are expenditures for medical assistance for children who are born before October 1, 1983, and who would be described in section 1396a(l)(1)(D) of this title if they had been born on or after such date, and who are not

eligible for such assistance under the State plan under this subchapter based on such State plan as in effect as of March 31, 1997.

(4) The limitations on payment under subsections (f) and (g) of section 1308 of this title shall not apply to Federal payments made under section 1396b(a)(1) of this title based on an enhanced FMAP described in section 1397ee(b) of this title.

(v) Employed individual with a medically improved disability

(1) The term "employed individual with a medically improved disability" means an individual who −

(A) is at least 16, but less than 65, years of age;

(B) is employed (as defined in paragraph (2));

(C) ceases to be eligible for medical assistance under section 1396a(a)(10)(A)(ii)(XV) of this title because the individual, by reason of medical improvement, is determined at the time of a regularly scheduled continuing disability review to no longer be eligible for benefits under section 423(d) or 1382c(a)(3) of this title; and

(D) continues to have a severe medically determinable impairment, as determined under regulations of the Secretary.

(2) For purposes of paragraph (1), an individual is considered to be "employed" if the individual −

(A) is earning at least the applicable minimum wage requirement under section 206 of title 29 and working at least 40 hours per month; or

(B) is engaged in a work effort that meets substantial and

reasonable threshold criteria for hours of work, wages, or other measures, as defined by the State and approved by the Secretary.

(w) Independent foster care adolescent

(1) For purposes of this subchapter, the term "independent foster care adolescent" means an individual −

(A) who is under 21 years of age;

(B) who, on the individual's 18th birthday, was in foster care under the responsibility of a State; and

(C) whose assets, resources, and income do not exceed such levels (if any) as the State may establish consistent with paragraph (2).

(2) The levels established by a State under paragraph (1)(C) may not be less than the corresponding levels applied by the State under section 1396u−1(b) of this title.

(3) A State may limit the eligibility of independent foster care adolescents under section 1396a(a)(10)(A)(ii)(XVII) of this title to those individuals with respect to whom foster care maintenance payments or independent living services were furnished under a program funded under part E of subchapter IV of this chapter before the date the individuals attained 18 years of age.

−SOURCE−

(Aug. 14, 1935, ch. 531, title XIX, Sec. 1905, as added Pub. L. 89−97, title I, Sec. 121(a), July 30, 1965, 79 Stat. 351; amended Pub. L. 90−248, title II, Secs. 230, 233, 241(f)(6), 248(e), title III, Sec. 302(a), Jan. 2, 1968, 81 Stat. 905, 917, 919, 929; Pub. L. 92−223, Sec. 4(a), Dec. 28, 1971, 85 Stat. 809; Pub. L. 92−603,

title II, Secs. 212(a), 247(b), 275(a), 278(a)(21)−(23), 280, 297(a), 299, 299B, 299E(b), 299L, Oct. 30, 1972, 86 Stat. 1384, 1425, 1452−1454, 1459−1462, 1464; Pub. L. 93−233, Secs. 13(a)(13)−(88), 18(w), (x)(7)−(10), (y)(2), Dec. 31, 1973, 87 Stat. 963, 964, 972, 973; Pub. L. 94−437, title IV, Sec. 402(e), Sept. 30, 1976, 90 Stat. 1410; Pub. L. 95−210, Sec. 2(a), (b), Dec. 13, 1977, 91 Stat. 1488; Pub. L. 95−292, Sec. 8(a), (b), June 13, 1978, 92 Stat. 316; Pub. L. 96−473, Sec. 6(k), Oct. 19, 1980, 94 Stat. 2266; Pub. L. 96−499, title IX, Sec. 965(a), Dec. 5, 1980, 94 Stat. 2651; Pub. L. 97−35, title XXI, Secs. 2162(a)(2), 2172(b), Aug. 13, 1981, 95 Stat. 806, 808; Pub. L. 97−248, title I, Secs. 136(c), 137(b)(17), (18), (f), Sept. 3, 1982, 96 Stat. 376, 379, 381; Pub. L. 98−369, div. B, title III, Secs. 2335(f), 2340(b), 2361(b), 2371(a), 2373(b)(15)−(20), July 18, 1984, 98 Stat. 1091, 1093, 1104, 1110, 1112; Pub. L. 99−272, title IX, Secs. 9501(a), 9505(a), 9511(a), Apr. 7, 1986, 100 Stat. 201, 208, 212; Pub. L. 99−509, title IX, Secs. 9403(b), (d), (g)(3), 9404(b), 9408(c)(1), 9435(b)(2), Oct. 21, 1986, 100 Stat. 2053, 2054, 2056, 2061, 2070; Pub. L. 99−514, title XVIII, Sec. 1895(c)(3)(A), Oct. 22, 1986, 100 Stat. 2935; Pub. L. 100−203, title IV, Secs. 4073(d), 4101(c)(1), 4103(a), 4105(a), 4114, 4118(p)(8), 4211(e), (f), (h)(6), Dec. 22, 1987, 101 Stat. 1330−119, 1330−141, 1330−146, 1330−147, 1330−152, 1330−159, 1330−204 to 1330−206; Pub. L. 100−360, title III, Sec. 301(a)(2)−(d), (g)(2), title IV, Sec. 411(h)(4)(E), (k)(4), (8), (14)(A), July 1, 1988, 102 Stat. 748−750, 787, 791, 794, 798; Pub. L. 100−485, title III, Sec. 303(b)(2), title IV, Sec. 401(d)(2),

title VI, Sec. 608(d)(14)(A)−(G), (J), (f)(3), Oct. 13, 1988, 102 Stat. 2392, 2396, 2415, 2416, 2424; Pub. L. 100−647, title VIII, Sec. 8434(a), (b)(3), (4), Nov. 10, 1988, 102 Stat. 3805; Pub. L. 101−234, title II, Sec. 201(b), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101−239, title VI, Secs. 6402(c)(1), 6403(a), (c), (d)(2), 6404(a), (b), 6405(a), 6408(d)(2), (4)(A), (B), Dec. 19, 1989, 103 Stat. 2261−2265, 2268, 2269; Pub. L. 101−508, title IV, Secs. 4402(d)(2), 4501(a), (c), (e)(1), 4601(a)(2), 4704(c), (d), (e)(1), 4705(a), 4711(a), 4712(a), 4713(b), 4717, 4719(a), 4721(a), 4722, 4755(a)(1)(A), Nov. 5, 1990, 104 Stat. 1388−163 to 1388−166, 1388−172, 1388−174, 1388−187, 1388−191, 1388−193, 1388−194, 1388−209; Pub. L. 103−66, title XIII, Secs. 13601(a), 13603(e), 13605(a), 13606(a), 13631(f)(2), (g)(1), Aug. 10, 1993, 107 Stat. 612, 620, 621, 644, 645; Pub. L. 103−296, title I, Sec. 108(d)(2), (3), Aug. 15, 1994, 108 Stat. 1486; Pub. L. 104−299, Sec. 4(b)(2), Oct. 11, 1996, 110 Stat. 3645; Pub. L. 105−33, title IV, Secs. 4702(a), 4711(c)(1), 4712(d)(1), 4714(a)(2), 4725(b)(1), 4732(b), 4802(a)(1), 4911(a), Aug. 5, 1997, 111 Stat. 494, 508−510, 518, 520, 538, 570; Pub. L. 105−100, title I, Sec. 162(1), (2), Nov. 19, 1997, 111 Stat. 2188; Pub. L. 106−113, div. B, Sec. 1000(a)(6) [title VI, Secs. 605(a), 608(l), (m), (aa)(3)], Nov. 29, 1999, 113 Stat. 1536, 1501A−396 to 1501A−398; Pub. L. 106−169, title I, Sec. 121(a)(2), (c)(5), Dec. 14, 1999, 113 Stat. 1829, 1830; Pub. L. 106−170, title II, Sec. 201(a)(2)(B), (C), Dec. 17, 1999, 113 Stat. 1892; Pub. L. 106−354, Sec. 2(a)(4), (c), Oct. 24, 2000, 114 Stat. 1382, 1384; Pub. L. 106−554, Sec. 1(a)(6) [title VII, Sec. 709(a),

title VIII, Sec. 802(d)(1), (2), title IX, Sec. 911(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A−578, 2763A−581, 2763A−584.)

−REFTEXT−

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in subsecs. (a), (m)(1), and (n), is classified to section 601 et seq. of this title.

Parts A and B of subchapter XVIII of this chapter, referred to in subsecs. (a), (l)(2)(B)(iv), (o)(3)(B), (p)(1)(A), and (s)(1), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Section 606 of this title, referred to in subsec. (a)(ii), was repealed and a new section 606 enacted by Pub. L. 104−193, title I, Sec. 103(a)(1), Aug. 22, 1996, 110 Stat. 2112, and, as so enacted, no longer contains a subsec. (b)(1).

Section 211 of Pub. L. 93−66, referred to in subsec. (k), is section 211 of Pub. L. 93−66, July 9, 1973, 87 Stat. 152, as amended, which is set out as a note under section 1382 of this title.

The Indian Self−Determination Act, referred to in subsec. (l)(2)(B), is title I of Pub. L. 93−638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (Sec. 450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

The Indian Health Care Improvement Act, referred to in subsec.

(l)(2)(B), is Pub. L. 94−437, Sept. 30, 1976, 90 Stat. 1400, as amended. Title V of the Act is classified generally to subchapter IV (Sec. 1651 et seq.) of chapter 18 of Title 25. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

Clause (ii), referred to in subsec. (l)(2)(B), was redesignated as cl. (iii) by Pub. L. 101−508, title IV, Sec. 4704(c)(3), Nov. 5, 1990, 104 Stat. 1388−172.

Section 607 of this title, referred to in subsec. (m)(1), was repealed and a new section 607 enacted by Pub. L. 104−193, title I, Sec. 103(a)(1), Aug. 22, 1996, 110 Stat. 2112, and, as so enacted, no longer contains a subsec. (b)(2)(B)(i).

Section 212 of Public Law 93−66, referred to in subsec. (q)(1)(A), is section 212 of Pub. L. 93−66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

−MISC1−

AMENDMENTS

2000 − Subsec. (a)(xiii). Pub. L. 106−354, Sec. 2(a)(4), added cl. (xiii).

Subsec. (b). Pub. L. 106−554, Sec. 1(a)(6) [title VIII, Sec. 802(d)(1)], in last sentence, substituted "the State's available allotment under section 1397dd of this title" for "the State's allotment under section 1397dd of this title (not taking into account reductions under section 1397dd(d)(2) of this title) for the fiscal year reduced by the amount of any payments made under

section 1397ee of this title to the State from such allotment for such fiscal year".

Pub. L. 106−354, Sec. 2(c), in first sentence, struck out "and" before "(3)" and inserted before period at end ", and (4) the Federal medical assistance percentage shall be equal to the enhanced FMAP described in section 1397ee(b) of this title with respect to medical assistance provided to individuals who are eligible for such assistance only on the basis of section 1396a(a)(10)(A)(ii)(XVIII) of this title".

Subsec. (p)(5). Pub. L. 106−554, Sec. 1(a)(6) [title VII, Sec. 709(a)], added par. (5).

Subsec. (p)(6). Pub. L. 106−554, Sec. 1(a)(6) [title IX, Sec. 911(a)(2)], added par. (6).

Subsec. (u)(1)(B). Pub. L. 106−554, Sec. 1(a)(6) [title VIII, Sec. 802(d)(2)], struck out "and section 1397dd(d) of this title" before period at end.

1999 − Subsec. (a)(xii). Pub. L. 106−170, Sec. 201(a)(2)(C), added cl. (xii).

Subsec. (a)(15). Pub. L. 106−113, Sec. 1000(a)(6) [title VI, Sec. 608(aa)(3)], substituted "1396a(a)(31) of this title" for "1396a(a)(31)(A) of this title".

Subsec. (b). Pub. L. 106−113, Sec. 1000(a)(6) [title VI, Sec. 605(a)], inserted "(other than expenditures under section 1396r−4 of this title)" after "with respect to expenditures" in last sentence.

Subsec. (b)(1). Pub. L. 106−113, Sec. 1000(a)(6) [title VI, Sec.

608(l)], substituted "83 per centum," for "83 per centum,,".

Subsec. (l)(2)(B). Pub. L. 106−113, Sec. 1000(a)(6) [title VI, Sec. 608(m)], substituted "an entity" for "a entity" in introductory provisions.

Subsec. (v). Pub. L. 106−169, Sec. 121(c)(5)(A), redesignated subsec. (v), related to independent foster care adolescent, as (w).

Pub. L. 106−169, Sec. 121(a)(2), added subsec. (v), related to independent foster care adolescent.

Pub. L. 106−170, Sec. 201(a)(2)(B), added subsec. (v).

Subsec. (w). Pub. L. 106−169, Sec. 121(c)(5), redesignated subsec. (v) as (w) and substituted "1396a(a)(10)(A)(ii)(XVII)" for "1396a(a)(10)(A)(ii)(XV)".

1997 − Subsec. (a)(25). Pub. L. 105−33, Sec. 4702(a)(1), added par. (25). Former par. (25) redesignated (26).

Subsec. (a)(26). Pub. L. 105−33, Sec. 4802(a)(1), added par. (26). Former par. (26) redesignated (27).

Pub. L. 105−33, Sec. 4702(a)(1)(B), redesignated par. (25) as (26) and substituted comma for period at end.

Subsec. (a)(27). Pub. L. 105−33, Sec. 4802(a)(1)(B), redesignated par. (26) as (27).

Subsec. (b). Pub. L. 105−100, Sec. 162(1), inserted "for the State for a fiscal year, and that do not exceed the amount of the State's allotment under section 1397dd of this title (not taking into account reductions under section 1397dd(d)(2) of this title) for the fiscal year reduced by the amount of any payments made under section 1397ee of this title to the State from such allotment

for such fiscal year," after "subsection (u)(3) of this section".

Pub. L. 105−33, Sec. 4911(a)(1), inserted at end "Notwithstanding the first sentence of this subsection, in the case of a State plan that meets the condition described in subsection (u)(1) of this section, with respect to expenditures described in subsection (u)(2)(A) of this section or subsection (u)(3) of this section the Federal medical assistance percentage is equal to the enhanced FMAP described in section 1397ee(b) of this title."

Pub. L. 105−33, Sec. 4732(b), substituted "Subject to section 1396u−3(d) of this title, the term" for "The term".

Pub. L. 105−33, Sec. 4725(b)(1), in first sentence, substituted ", (2)" for "and (2)" and inserted before period ", and (3) for purposes of this subchapter and subchapter XXI of this chapter, the Federal medical assistance percentage for the District of Columbia shall be 70 percent".

Subsec. (l)(2)(B)(iii). Pub. L. 105−33, Sec. 4712(d)(1), inserted "including requirements of the Secretary that an entity may not be owned, controlled, or operated by another entity," after "such a grant,".

Subsec. (o)(3). Pub. L. 105−33, Sec. 4711(c)(1), substituted "amount determined in section 1396a(a)(13)(B) of this title" for "amount described in section 1396a(a)(13)(D) of this title" in concluding provisions.

Subsec. (p)(3). Pub. L. 105−33, Sec. 4714(a)(2), inserted "(subject to section 1396a(n)(2) of this title)" after "means" in introductory provisions.

Subsec. (t). Pub. L. 105−33, Sec. 4702(a)(2), added subsec. (t).

Subsec. (u). Pub. L. 105−33, Sec. 4911(a)(2), added subsec. (u).

Subsec. (u)(1)(B). Pub. L. 105−100, Sec. 162(2)(A), substituted "the fourth sentence of subsection (b) of this section" for "paragraph (2)".

Subsec. (u)(2)(A). Pub. L. 105−100, Sec. 162(2)(B), substituted "subparagraph (B)" for "subparagraph (C), but not in excess, for a State for a fiscal year, of the amount described in subparagraph (B) for the State and fiscal year".

Subsec. (u)(2)(B), (C). Pub. L. 105−100, Sec. 162(2)(C), added subpar. (B) and struck out former subpars. (B) and (C) which read as follows:

"(B) The amount described in this subparagraph, for a State for a fiscal year, is the amount of the State's allotment under section 1397dd of this title (not taking into account reductions under section 1397dd(d)(2) of this title) for the fiscal year reduced by the amount of any payments made under section 1397ee of this title to the State from such allotment for such fiscal year.

"(C) For purposes of this paragraph, the term 'optional targeted low−income child' means a targeted low−income child as defined in section 1397jj(b)(1) of this title who would not qualify for medical assistance under the State plan under this subchapter based on such plan as in effect on April 15, 1997 (but taking into account the expansion of age of eligibility effected through the operation of section 1396a(l)(2)(D) of this title)."

Subsec. (u)(3). Pub. L. 105−100, Sec. 162(2)(D), substituted

"described in this paragraph" for "described in this subparagraph" and "March 31, 1997" for "April 15, 1997".

Subsec. (u)(4). Pub. L. 105−100, Sec. 162(2)(E), added par. (4).

1996 − Subsec. (l)(2)(B)(i), (ii)(II). Pub. L. 104−299 substituted "section 254b of this title" for "section 254b, 254c, 256, or 256a of this title".

1994 − Subsecs. (j), (q)(2). Pub. L. 103−296 substituted "Commissioner of Social Security" for "Secretary".

1993 − Subsec. (a)(xi). Pub. L. 103−66, Sec. 13603(e)(1)−(3), added cl. (xi).

Subsec. (a)(7). Pub. L. 103−66, Sec. 13601(a)(1), struck out "including personal care services (A) prescribed by a physician for an individual in accordance with a plan of treatment, (B) provided by an individual who is qualified to provide such services and who is not a member of the individual's family, (C) supervised by a registered nurse, and (D) furnished in a home or other location; but not including such services furnished to an inpatient or resident of a nursing facility" after "services".

Subsec. (a)(17). Pub. L. 103−66, Sec. 13605(a), inserted before semicolon at end ", and without regard to whether or not the services are performed in the area of management of the care of mothers and babies throughout the maternity cycle".

Subsec. (a)(19). Pub. L. 103−66, Sec. 13603(e)(4), amended par. (19) generally, inserting reference to TB−related services described in section 1396a(z)(2)(F) of this title.

Subsec. (a)(21). Pub. L. 103−66, Sec. 13601(a)(2), struck out

"and" at end.

Subsec. (a)(22). Pub. L. 103−66, Sec. 13601(a)(4), redesignated par. (23) as (22). Former par. (22) redesignated (25).

Subsec. (a)(23). Pub. L. 103−66, Sec. 13601(a)(4), redesignated par. (24) as (23). Former par. (23) redesignated (22).

Subsec. (a)(24). Pub. L. 103−66, Sec. 13601(a)(5), added par. (24). Former par. (24) redesignated (23).

Pub. L. 103−66, Sec. 13601(a)(3), which directed amendment of par. (24) by substituting semicolon for comma at end, was executed by substituting semicolon for period at end to reflect the probable intent of Congress.

Subsec. (a)(25). Pub. L. 103−66, Sec. 13601(a)(4), redesignated par. (22) as (25), transferred such par. to appear after par. (23), and substituted period for semicolon at end.

Subsec. (l)(2)(B). Pub. L. 103−66, Sec. 13631(f)(2)(B), in concluding provisions, inserted "or by an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act for the provision of primary health services" before ". In applying clause".

Subsec. (l)(2)(B)(i). Pub. L. 103−66, Sec. 13631(f)(2)(A), substituted "256, or 256a" for "or 256".

Pub. L. 103−66, Sec. 13606(a)(1), struck out "or" at end.

Subsec. (l)(2)(B)(ii). Pub. L. 103−66, Sec. 13631(f)(2)(A), substituted "256, or 256a" for "or 256" in subcl. (II).

Pub. L. 103−66, Sec. 13606(a)(2), (3), realigned margin and substituted a comma for semicolon at end.

Subsec. (l)(2)(B)(iv). Pub. L. 103−66, Sec. 13606(a)(4), (5), added cl. (iv).

Subsec. (r)(1)(A)(i). Pub. L. 103−66, Sec. 13631(g)(1)(A), inserted "and, with respect to immunizations under subparagraph (B)(iii), in accordance with the schedule referred to in section 1396s(c)(2)(B)(i) of this title for pediatric vaccines" after "child health care".

Subsec. (r)(1)(B)(iii). Pub. L. 103−66, Sec. 13631(g)(1)(B), inserted "(according to the schedule referred to in section 1396s(c)(2)(B)(i) of this title for pediatric vaccines)" after "appropriate immunizations".

1990 − Subsec. (a). Pub. L. 101−508, Sec. 4722, inserted at end "No service (including counseling) shall be excluded from the definition of 'medical assistance' solely because it is provided as a treatment service for alcoholism or drug dependency."

Pub. L. 101−508, Sec. 4402(d)(2), inserted at end "The payment described in the first sentence may include expenditures for medicare cost−sharing and for premiums under part B of subchapter XVIII of this chapter for individuals who are eligible for medical assistance under the plan and (A) are receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter, or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, or (B) with respect to whom there is being paid a State supplementary payment and are eligible for medical assistance equal in amount, duration,

and scope to the medical assistance made available to individuals described in section 1396a(a)(10)(A) of this title, and, except in the case of individuals 65 years of age or older and disabled individuals entitled to health insurance benefits under subchapter XVIII of this chapter who are not enrolled under part B of subchapter XVIII of this chapter, other insurance premiums for medical or any other type of remedial care or the cost thereof."

Subsec. (a)(x). Pub. L. 101−508, Sec. 4713(b), added cl. (x).

Subsec. (a)(2)(C). Pub. L. 101−508, Sec. 4704(e)(1), repealed Pub. L. 101−239, Sec. 6402(c)(1). See 1989 Amendment note below.

Subsec. (a)(7). Pub. L. 101−508, Sec. 4721(a), substituted "services including personal care services" for "services" and added subpars. (A) to (D).

Subsec. (a)(13). Pub. L. 101−508, Sec. 4719(a), inserted before semicolon at end ", including any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level".

Subsec. (a)(22). Pub. L. 101−508, Sec. 4711(a)(1), which directed amendment of par. (22) by striking "and" at end, could not be executed because the word did not appear.

Subsec. (a)(23). Pub. L. 101−508, Sec. 4712(a)(1), inserted "and" after semicolon at end.

Pub. L. 101−508, Sec. 4711(a)(2), (3), which directed amendment

of subsec. (a) by redesignating par. (23) as (24) and adding a new par. (23), was executed by adding the new par. (23), there being no former par. (23).

Subsec. (a)(24). Pub. L. 101−508, Sec. 4712(a)(2), (3), which directed amendment of subsec. (a) by redesignating par. (24) as (25) and adding a new par. (24), was executed by adding the new par. (24), there being no former par. (24).

Subsec. (h)(1)(A). Pub. L. 101−508, Sec. 4755(a)(1)(A), inserted "or in another inpatient setting that the Secretary has specified in regulations" after "section 1395x(f) of this title".

Subsec. (l)(2)(A). Pub. L. 101−508, Sec. 4704(c)(1), substituted "patient" for "outpatient".

Subsec. (l)(2)(B). Pub. L. 101−508, Sec. 4704(d)(2), which directed amendment of subpar. (B) by inserting "and includes an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self−Determination Act (Public Law 93−638)." after and below cl. (ii), was executed by inserting the new language after cl. (iii) to reflect the probable intent of Congress and the intervening redesignation of former cl. (ii) as (iii) by Pub. L. 101−508, Sec. 4704(c)(3). See below.

Pub. L. 101−508, Sec. 4704(c)(2), substituted "entity" for "facility" in introductory provisions.

Subsec. (l)(2)(B)(ii), (iii). Pub. L. 101−508, Sec. 4704(c)(3), (d)(1), added cl. (ii), redesignated former cl. (ii) as (iii), and substituted comma for period at end of cl. (iii).

Subsec. (n)(2). Pub. L. 101−508, Sec. 4601(a)(2), substituted

"age of 19" for "age of 7 (or any age designated by the State that exceeds 7 but does not exceed 8)".

Subsec. (o)(1)(A). Pub. L. 101−508, Sec. 4717, inserted "and for which payment may otherwise be made under subchapter XVIII of this chapter" after "section 1395d(d)(2)(A) of this title".

Subsec. (o)(3). Pub. L. 101−508, Sec. 4705(a)(1), struck out "a State which elects not to provide medical assistance for hospice care, but provides medical assistance for skilled nursing or intermediate care facility services with respect to" after "In the case of" in introductory provisions.

Pub. L. 101−508, Sec. 4705(a)(3), (4), in concluding provisions, substituted "the additional amount described in section 1396a(a)(13)(D) of this title" for "the amounts allocated under the plan for room and board in the facility, in accordance with the rates established under section 1396a(a)(13) of this title," and struck out at end "For purposes of this paragraph and section 1396a(a)(13)(D) of this title, the term 'room and board' includes performance of personal care services, including assistance in activities of daily living, in socializing activities, administration of medication, maintaining the cleanliness of a resident's room, and supervising and assisting in the use of durable medical equipment and prescribed therapies."

Subsec. (o)(3)(A), (C). Pub. L. 101−508, Sec. 4705(a)(2), substituted "nursing facility or intermediate care facility for the mentally retarded" for "skilled nursing or intermediate care facility".

Subsec. (p)(1)(B). Pub. L. 101−508, Sec. 4501(e)(1)(A), which directed amendment of subpar. (B) by inserting ", except as provided in paragraph (2)(D)" after "supplementary social security income program", was executed by inserting the new language after "supplemental security income program" to reflect the probable intent of Congress.

Subsec. (p)(2)(B). Pub. L. 101−508, Sec. 4501(a)(1), inserted "and" at end of cl. (ii), substituted "100 percent." for "95 percent, and" in cl. (iii), and struck out cl. (iv) which read as follows: "January 1, 1992, is 100 percent."

Subsec. (p)(2)(C). Pub. L. 101−508, Sec. 4501(a)(2), substituted "95 percent, and" for "90 percent," in cl. (iii) and "100 percent." for "95 percent, and" in cl. (iv) and struck out cl. (v) which read as follows: "January 1, 1993, is 100 percent."

Subsec. (p)(2)(D). Pub. L. 101−508, Sec. 4501(e)(1)(B), added subpar. (D).

Subsec. (p)(4). Pub. L. 101−508, Sec. 4501(c)(2), inserted at end "In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1315 of this title, the Secretary shall require the State to meet the requirement of section 1396a(a)(10)(E) of this title in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this subchapter."

Subsec. (p)(4)(B). Pub. L. 101−508, Sec. 4501(c)(1), inserted "or 1396a(a)(10)(E)(iii) of this title" after "subparagraph (B)".

1989 − Subsec. (a)(2)(B). Pub. L. 101−239, Sec. 6404(a)(2),

substituted "subsection (l)(1)" for "subsection (l)" in two places.

Subsec. (a)(2)(C). Pub. L. 101−239, Sec. 6404(a)(3), added cl. (C) relating to Federally−qualified health center services.

Pub. L. 101−239, Sec. 6402(c)(1), which directed addition of cl. (C) relating to ambulatory services, was repealed by Pub. L. 101−508, Sec. 4704(e)(1).

Subsec. (a)(4)(B). Pub. L. 101−239, Sec. 6403(d)(2), amended cl. (B) generally. Prior to amendment, cl. (B) read as follows: "effective July 1, 1969, such early and periodic screening and diagnosis of individuals who are eligible under the plan and are under the age of 21 to ascertain their physical or mental defects, and such health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby, as may be provided in regulations of the Secretary; and".

Subsec. (a)(21), (22). Pub. L. 101−239, Sec. 6405(a), added par. (21) and redesignated former par. (21) as (22).

Subsec. (l). Pub. L. 101−239, Sec. 6404(b), designated existing provisions as par. (1), redesignated former cls. (1) and (2) as (A) and (B), respectively, and added par. (2).

Subsec. (p)(1)(A). Pub. L. 101−239, Sec. 6408(d)(4)(B), inserted ", but not including an individual entitled to such benefits only pursuant to an enrollment under section 1395i−2a of this title" after "section 1395i−2 of this title".

Subsec. (p)(3)(A). Pub. L. 101−239, Sec. 6408(d)(4)(A)(i), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "Premiums under subchapter XVIII of this chapter

(including under part B and, if applicable, under section 1395i−2 of this title)."

Subsec. (p)(3)(A)(i). Pub. L. 101−239, Sec. 6408(d)(4)(A)(ii), substituted "section 1395i−2 or 1395i−2a" for "section 1395i−2".

Subsec. (p)(3)(C). Pub. L. 101−234, Sec. 201(b)(1), substituted "Deductibles" for "Subject to paragraph (4), deductibles" and "section 1395e of this title and section 1395l(b) of this title)" for "section 1395e of this title, section 1395l(b) of this title, and section 1395m(c)(1) of this title".

Subsec. (p)(4), (5). Pub. L. 101−234, Sec. 201(b)(2), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: "In a State which provides medical assistance for prescribed drugs under subsection (a)(12) of this section, instead of providing to qualified medicare beneficiaries, under paragraph (3)(C), medicare cost−sharing with respect to the annual deductible for covered outpatient drugs under section 1395m(c)(1) of this title, the State may provide to such beneficiaries, before charges for covered outpatient drugs for a year reach such deductible amount, benefits for prescribed drugs in the same amount, duration, and scope as the benefits made available under the State plan for individuals described in section 1396a(a)(10)(A)(i) of this title."

Subsec. (r). Pub. L. 101−239, Sec. 6403(c), inserted at end "The Secretary shall, not later than July 1, 1990, and every 12 months thereafter, develop and set annual participation goals for each State for participation of individuals who are covered under the State plan under this subchapter in early and periodic screening,

diagnostic, and treatment services."

Pub. L. 101−239, Sec. 6403(a), added subsec. (r).

Subsec. (s). Pub. L. 101−239, Sec. 6408(d)(2), added subsec. (s).

1988 − Subsec. (a). Pub. L. 100−647, Sec. 8434(b)(3), substituted "in the case of medicare cost−sharing with respect to a qualified medicare beneficiary" for "in the case of a qualified medicare beneficiary" in introductory provisions.

Subsec. (a)(ix). Pub. L. 100−485, Sec. 303(b)(2), added cl. (ix).

Subsec. (a)(5)(B). Pub. L. 100−360, Sec. 411(k)(4), substituted "described in clause (A) if" for "described in subparagraph (A) if".

Subsec. (a)(17). Pub. L. 100−360, Sec. 411(h)(4)(E), amended Pub. L. 100−203, Sec. 4073(d)(1), see 1987 Amendment note below.

Subsec. (i). Pub. L. 100−360, Sec. 411(k)(14)(A), added subsec. (i).

Subsec. (m). Pub. L. 100−485, Sec. 401(d)(2), added subsec. (m).

Subsec. (o)(1). Pub. L. 100−360, Sec. 411(k)(8)(A), made clarifying amendment to directory language of Pub. L. 100−203, Sec. 4114, see 1987 Amendment note below.

Subsec. (o)(1)(B). Pub. L. 100−360, Sec. 411(k)(8)(B), struck out "only" after "For purposes of this subchapter" and substituted "immune deficiency syndrome (AIDS)" for "immunodeficiency syndrome".

Subsec. (o)(3). Pub. L. 100−485, Sec. 608(f)(3), realigned the margin of par. (3).

Subsec. (p)(1). Pub. L. 100−647, Sec. 8434(a), redesignated

subpars. (C) and (D) as (B) and (C), respectively, and struck out former subpar. (B) which read: "who, but for section 1396a(a)(10)(E) of this title, is not eligible for medical assistance under the plan,".

Subsec. (p)(1)(B). Pub. L. 100−360, Sec. 301(a)(2), struck out "and the election of the State" after "1396a(a)(10)(E) of this title".

Subsec. (p)(1)(C). Pub. L. 100−360, Sec. 301(c)(1), as amended by Pub. L. 100−485, Sec. 608(d)(14)(E)(i), substituted "paragraph (2)" for "paragraph (2)(A)".

Subsec. (p)(1)(D). Pub. L. 100−360, Sec. 301(c)(2), as amended by Pub. L. 100−485, Sec. 608(d)(14)(E)(ii), substituted "twice" for "(except as provided in paragraph (2)(B))".

Subsec. (p)(2)(A). Pub. L. 100−647, Sec. 8434(b)(4), substituted "paragraph (1)(B)" for "paragraph (1)(C)".

Pub. L. 100−360, Sec. 301(b)(1), as amended by Pub. L. 100−485, Sec. 608(d)(14)(A), substituted "shall be at least the percent provided under subparagraph (B) (but not more than 100 percent)" for "may not exceed a percentage (not more than 100 percent)".

Pub. L. 100−360, Sec. 301(c)(3)(A), which directed amendment of subpar. (A) by striking "(2)(A)" and inserting "(2)", was repealed by Pub. L. 100−485, Sec. 608(d)(14)(E)(iii).

Pub. L. 100−360, Sec. 301(b)(2), which directed amendment of subpar. (A) by inserting "(i)" after "(2)(A)", was repealed by Pub. L. 100−485, Sec. 608(d)(14)(B).

Subsec. (p)(2)(B). Pub. L. 100−360, Sec. 301(b)(2), formerly Sec.

301(b)(3), as renumbered and amended by Pub. L. 100−485, Sec. 608(d)(14)(B)−(D)(ii), added subpar. (B) and struck out former subpar. (B) which read as follows: "In the case of a State that provides medical assistance to individuals not described in section 1396a(a)(10)(A) of this title and at the State's option, the State may use under paragraph (1)(D) such resource level (which is higher than the level described in that paragraph) as may be applicable with respect to individuals described in paragraph (1)(A) who are not described in section 1396a(a)(10)(A) of this title."

Pub. L. 100−360, Sec. 301(c)(3)(B), which directed amendment of par. (2) by striking subpar. (B), was repealed by Pub. L. 100−485, Sec. 608(d)(14)(E)(iii).

Subsec. (p)(2)(C). Pub. L. 100−360, Sec. 301(b)(2), formerly Sec. 301(b)(3), as renumbered and amended by Pub. L. 100−485, Sec. 608(d)(14)(B), (C), (D)(i), (iii), added subpar. (C).

Subsec. (p)(3). Pub. L. 100−360, Sec. 301(d)(1), as added by Pub. L. 100−485, Sec. 608(d)(14)(G)(ii), inserted "without regard to whether the costs incurred were for items and services for which medical assistance is otherwise available under the plan" after "qualified medicare beneficiary" in introductory provisions.

Subsec. (p)(3)(A). Pub. L. 100−360, Sec. 301(d)(2), formerly Sec. 301(d)(1), as renumbered by Pub. L. 100−485, Sec. 608(d)(14)(G)(i), substituted "under subchapter XVIII of this chapter (including under part B and, if applicable, under section 1395i−2 of this title)" for "under part B and (if applicable) under section 1395i−2 of this title".

Subsec. (p)(3)(B). Pub. L. 100−360, Sec. 301(d)(3), formerly Sec. 301(d)(2), as renumbered by Pub. L. 100−485, Sec. 608(d)(14)(G)(i), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "Deductibles and coinsurance described in section 1395e of this title."

Subsec. (p)(3)(C). Pub. L. 100−360, Sec. 301(d)(3), formerly Sec. 301(d)(2), as renumbered and amended by Pub. L. 100−485, Sec. 608(d)(14)(F), (G)(i), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "The annual deductible described in section 1395l(b) of this title."

Subsec. (p)(4). Pub. L. 100−360, Sec. 301(d)(4), formerly Sec. 301(d)(3), as renumbered by Pub. L. 100−485, Sec. 618(d)(14)(G)(i), added par. (4).

Subsec. (p)(5). Pub. L. 100−360, Sec. 301(g)(2), as amended by Pub. L. 100−485, Sec. 608(d)(14)(J), added par. (5).

1987 − Subsec. (a)(4)(A). Pub. L. 100−203, Sec. 4211(f), struck out "skilled" before "nursing".

Subsec. (a)(5). Pub. L. 100−203, Sec. 4211(h)(6)(A), struck out "skilled" before "nursing" in cl. (A).

Pub. L. 100−203, Sec. 4103(a), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (a)(9). Pub. L. 100−203, Sec. 4105(a), inserted provision including services furnished to an eligible individual who does not reside in a permanent dwelling or have a fixed home or mailing address.

Subsec. (a)(14). Pub. L. 100−203, Sec. 4211(h)(6)(B), substituted

"and nursing facility services" for ", skilled nursing facility services, and intermediate care facility services".

Subsec. (a)(15). Pub. L. 100−203, Sec. 4211(h)(6)(C), substituted "services in an intermediate care facility for the mentally retarded (other than" for "intermediate care facility services (other than such services".

Subsec. (a)(17). Pub. L. 100−203, Sec. 4073(d)(1), as amended by Pub. L. 100−360, Sec. 411(h)(4)(E), substituted "(as defined in section 1395x(gg) of this title)" for "(as defined in subsection (m) of this section)".

Subsec. (c). Pub. L. 100−203, Sec. 4211(e)(1), amended subsec. (c) generally. Prior to amendment, subsec. (c) defined "intermediate care facility".

Subsec. (d). Pub. L. 100−203, Sec. 4211(e)(2), substituted "intermediate care facility for the mentally retarded" for "intermediate care facility" and "means an" for "may include services in a public", and in par. (3) inserted "in the case of a public institution" after "(3)".

Subsec. (f). Pub. L. 100−203, Sec. 4211(e)(3), struck out "skilled" before "nursing" in four places and before "rehabilitation".

Subsec. (i). Pub. L. 100−203, Sec. 4211(e)(4), struck out subsec. (i) which provided that for purposes of this subchapter "skilled nursing facility" also includes any institution which is located in a State on an Indian reservation and is certified by the Secretary as being a qualified skilled nursing facility by meeting the

requirements of section 1395x(j) of this title.

Subsec. (m). Pub. L. 100−203, Sec. 4073(d)(2), struck out subsec. (m) which defined "nurse−midwife". See section 1395x(gg) of this title.

Subsec. (n)(2). Pub. L. 100−203, Sec. 4101(c)(1), substituted "has not attained the age of 7 (or any age designated by the State that exceeds 7 but does not exceed 8)" for "is under 5 years of age".

Subsec. (o)(1). Pub. L. 100−203, Sec. 4114, as amended by Pub. L. 100−360, Sec. 411(k)(8)(A), designated existing provisions as subpar. (A), substituted "Subject to subparagraph (B), the" for "The", and added subpar. (B).

Subsec. (p)(2)(A). Pub. L. 100−203, Sec. 4118(p)(8), struck out "nonfarm" before "official".

1986 − Subsec. (a). Pub. L. 99−509, Sec. 9403(g)(3), inserted "or, in the case of a qualified medicare beneficiary described in subsection (p)(1) of this section, if provided after the month in which the individual becomes such a beneficiary" after "makes application for assistance".

Subsec. (a)(18). Pub. L. 99−272, Sec. 9505(a)(1), added par. (18). Former par. (18) redesignated (19).

Subsec. (a)(19). Pub. L. 99−514, Sec. 1895(c)(3)(A), added par. (19). Former par. (19) redesignated (20).

Pub. L. 99−272, Sec. 9505(a)(1)(B), redesignated former par. (18) as (19).

Subsec. (a)(20). Pub. L. 99−509, Sec. 9408(c)(1), added par.

(20). Former par. (20) redesignated (21).

Pub. L. 99−514, Sec. 1895(c)(3)(A)(ii), redesignated former par. (19) as (20).

Subsec. (a)(21). Pub. L. 99−509, Sec. 9408(c)(1)(B), redesignated former par. (20) as (21).

Subsec. (n)(1)(C). Pub. L. 99−272, Sec. 9501(a), added subpar. (C).

Subsec. (n)(2). Pub. L. 99−272, Sec. 9511(a), inserted "(or such earlier date as the State may designate)" after "September 30, 1983".

Subsec. (o). Pub. L. 99−272, Sec. 9505(a)(2), added subsec. (o).

Subsec. (o)(3). Pub. L. 99−509, Sec. 9435(b)(2), added par. (3).

Subsec. (p). Pub. L. 99−509, Sec. 9403(b), (d), added subsec. (p).

Subsec. (q). Pub. L. 99−509, Sec. 9404(b), added subsec. (q).

1984 − Subsec. (a). Pub. L. 98−369, Sec. 2335(f), substituted "mental diseases" for "tuberculosis or mental diseases" in subd. (B) following par. (18).

Pub. L. 98−369, Sec. 2373(b)(17), substituted "clause (vi)" for "clauses (vi)" and "well−being" for "well being" in last sentence.

Subsec. (a)(1). Pub. L. 98−369, Sec. 2335(f), substituted "mental diseases" for "tuberculosis or mental diseases".

Subsec. (a)(4). Pub. L. 98−369, Sec. 2335(f), substituted "mental diseases" for "tuberculosis or mental diseases".

Pub. L. 98−369, Sec. 2373(b)(15), inserted a semicolon before "(B)".

Subsec. (a)(9). Pub. L. 98−369, Sec. 2371(a), amended par. (9) generally, inserting "furnished by or under the direction of a physician, without regard to whether the clinic itself is administered by a physician".

Subsec. (a)(14), (15). Pub. L. 98−369, Sec. 2335(f), substituted "mental diseases" for "tuberculosis or mental diseases".

Subsec. (a)(17). Pub. L. 98−369, Sec. 2373(b)(16), substituted "the nurse−midwife" for "he" in two places.

Subsec. (b). Pub. L. 98−369, Sec. 2373(b)(18), substituted "section 1301(a)(8)(B) of this title" for "subparagraph (B) of section 1301(a)(8) of this title".

Subsec. (d)(1). Pub. L. 98−369, Sec. 2373(b)(19), substituted "the institution meets" for "which meet".

Subsec. (h)(1)(A). Pub. L. 98−369, Sec. 2340(b), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "inpatient services which are provided in an institution which is accredited as a psychiatric hospital by the Joint Commission on Accreditation of Hospitals;".

Subsec. (m). Pub. L. 98−369, Sec. 2373(b)(20), substituted "the nurse" for "he" in two places.

Subsec. (n). Pub. L. 98−369, Sec. 2361(b), added subsec. (n).

1982 − Subsec. (a)(i). Pub. L. 97−248, Sec. 137(b)(17), struck out "or any reasonable category of such individuals," after "as the State may choose,".

Subsec. (a)(viii). Pub. L. 97−248, Sec. 137(b)(18), added cl. (viii).

Subsec. (b)(2). Pub. L. 97−248, Sec. 136(c), substituted "the Northern Mariana Islands, and American Samoa" for "and the Northern Mariana Islands".

Subsec. (h)(1)(C). Pub. L. 97−248, Sec. 137(f), redesignated cls. (i) and (ii) as subcls. (I) and (II), respectively, and redesignated cls. (A) and (B) as cls. (i) and (ii), respectively.

1981 − Subsec. (a). Pub. L. 97−35, Sec. 2172(b), in cl. (i), inserted "or, at the option of the State, under the age of 20, 19, or 18 as the State may choose, or any reasonable category of such individuals," and in cl. (ii), struck out reference to section 606(a)(2) of this title.

Subsec. (b). Pub. L. 97−35, Sec. 2162(a)(2), inserted reference to Northern Mariana Islands.

1980 − Subsec. (a)(17), (18). Pub. L. 96−499, Sec. 965(a)(1)(B), (C), added par. (17) and redesignated former par. (17) as (18).

Subsec. (c). Pub. L. 96−473 substituted "clause (1)" for "clauses (1)".

Subsec. (m). Pub. L. 96−499, Sec. 965(a)(2), added subsec. (m).

1978 − Subsec. (c). Pub. L. 95−292 added cl. (4) to first sentence relating to a requirement that intermediate care facilities meet section 1395x(j)(14) of this title with respect to protection of patients' personal funds, and inserted reference to that cl. (4) in provisions covering intermediate care facilities on Indian reservations.

1977 − Subsec. (a)(2). Pub. L. 95−210, Sec. 2(a), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (l). Pub. L. 95−210, Sec. 2(b), added subsec. (l).

1976 − Subsec. (b). Pub. L. 94−437 inserted provision requiring that the Federal medical assistance percentage be 100 per centum for services received through an Indian Health Service facility.

1973 − Subsec. (a). Pub. L. 93−233, Sec. 13(a)(13), substituted in introductory text "individuals (other than individuals with respect to whom there is being paid, or who are eligible or would be eligible if they were not in a medical institution, to have paid with respect to them a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1396a(a)(10)(A) of this title) not receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter, and with respect to whom supplemental security income benefits are not being paid under subchapter XVI of this chapter" for "individuals not receiving aid or assistance under the State's plan approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter".

Subsec. (a)(iv). Pub. L. 93−233, Sec. 13(a)(14), inserted "with respect to States eligible to participate in the State plan program established under subchapter XVI of this chapter," after "blind,".

Subsec. (a)(v). Pub. L. 93−233, Sec. 13(a)(15), substituted "with respect to States eligible to participate in the State plan program established under subchapter XVI of this chapter," for "or".

Subsec. (a)(vi). Pub. L. 93−233, Sec. 13(a)(16), inserted "or" at

end of text.

Subsec. (a)(vii). Pub. L. 93−233, Sec. 13(a)(17), added cl. (vii).

Subsec. (a)(16). Pub. L. 93−233, Sec. 18(x)(7), substituted "under age 21, as defined in subsection (h) of this section; and" for "under 21, as defined in subsection (e) of this section;".

Subsec. (b). Pub. L. 93−233, Sec. 18(y)(2), struck out "; except that the Secretary shall promulgate such percentage as soon as possible after July 30, 1965, which promulgation shall be conclusive for each of the six quarters in the period beginning January 1, 1966, and ending with the close of June 30, 1966" after "section 1301(a)(8) of this title".

Subsec. (c). Pub. L. 93−233, Sec. 18(x)(8), substituted "skilled nursing facility" for "skilled nursing home" wherever appearing.

Subsec. (h)(1)(B). Pub. L. 93−233, Sec. 18(w), substituted "(i) involve active treatment" for ", involves active treatment (i)"; struck out "pursuant to subchapter XVIII of this chapter" after "may be prescribed"; and substituted "(ii)" for "(ii) which", respectively.

Subsec. (h)(2). Pub. L. 93−233, Sec. 18(x)(10), substituted "paragraph (1)" for "paragraph (e)(1)".

Subsec. (i). Pub. L. 93−233, Sec. 18(x)(9), redesignated subsec. (h) as added by Pub. L. 92−603, Sec. 299L(b), as subsec. (i).

Subsecs. (j), (k). Pub. L. 93−233, Sec. 13(a)(18), added subsecs. (j) and (k).

1972 − Subsec. (a). Pub. L. 92−603, Sec. 299B(c), in text

following redesignated subsec. (a)(17) substituted "as otherwise provided in paragraph (16)," for "that".

Subsec. (a)(4). Pub. L. 92−603, Secs. 278(a)(21), 299E(b), substituted "skilled nursing facility" for "skilled nursing home" and added cl. (C).

Subsec. (a)(5). Pub. L. 92−603, Secs. 278(a)(22), 280, substituted "skilled nursing facility" for "skilled nursing home" and inserted "furnished by a physician (as defined in section 1395x(r)(1) of this title) after "physicians' services".

Subsec. (a)(14). Pub. L. 92−603, Secs. 278(a)(23), 297(a), substituted "skilled nursing facility" for "skilled nursing home" and inserted reference to intermediate care facility services.

Subsec. (a)(15) to (17). Pub. L. 92−603, Sec. 299B(a), added par. (16) and redesignated existing pars. (15) and (16) as (17) and (15), respectively.

Subsec. (c). Pub. L. 92−603, Sec. 299L(a), inserted provision defining "intermediate care facility" with respect to any institution located in a State on an Indian reservation.

Subsec. (d)(3). Pub. L. 92−603, Sec. 299, inserted provisions relating to reduction of non−Federal expenditures in any calendar quarter prior to January 1, 1975.

Subsec. (e). Pub. L. 92−603, Sec. 212(a), added subsec. (e).

Subsec. (f). Pub. L. 92−603, Sec. 247(b), added subsec. (f).

Subsec. (g). Pub. L. 92−603, Sec. 275(a), added subsec. (g).

Subsec. (h). Pub. L. 92−603, Sec. 299B(b), added subsec. (h).

Subsec. (i). Pub. L. 92−603, Sec. 299L(b), added subsec. (i),

1971 − Subsec. (a)(16). Pub. L. 92−223, Sec. 4(a)(1)(C), added cl. (16).

Subsecs. (c), (d). Pub. L. 92−223, Sec. 4(a)(2), added subsecs. (c) and (d).

1968 − Subsec. (a). Pub. L. 90−248, Sec. 230, inserted ", and with respect to physicians' or dentists' services, at the option of the State, to individuals not receiving aid or assistance under the State's plan approved under subchapter I, X, XIV, XVI of this chapter, or part A of subchapter IV of this chapter" after "for individuals" in text preceding cl. (i).

Pub. L. 90−248, Sec. 233(b), inserted provision deeming, for purposes of cl. (vi) of the preceding sentence, a person as essential to another individual if such person is the spouse of and is living with such individual, the needs of such person are taken into account in determining the amount of aid or assistance furnished to such individual (under a State plan approved under subchapter I, X, XIV, or XV of this chapter, and such person is determined, under such a State plan, to be essential to the well being of such individual.

Subsec. (a)(ii). Pub. L. 90−248, Sec. 241(f)(6), inserted "part A of" before "subchapter IV".

Subsec. (a)(vi). Pub. L. 90−248, Sec. 233(a), added cl. (vi).

Subsec. (a)(4). Pub. L. 90−248, Sec. 302(a), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (b). Pub. L. 90−248, Sec. 248(e), substituted in cl. (2) of first sentence "50" for "55".

EFFECTIVE DATE OF 2000 AMENDMENTS

Pub. L. 106−554, Sec. 1(a)(6) [title VII, Sec. 709(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A−578, provided that: "The amendment made by subsection (a) [amending this section] shall take effect 1 year after the date of the enactment of this Act [Dec. 21, 2000], regardless of whether regulations have been promulgated to carry out such amendment by such date. The Secretary of Health and Human Services shall develop the uniform application form under such amendment by not later than 9 months after the date of the enactment of this Act."

Pub. L. 106−554, Sec. 1(a)(6) [title VIII, Sec. 802(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A−582, provided that: "The amendments made by this section [amending this section and sections 1397dd, 1397ee, and 1397jj of this title] shall be effective as if included in the enactment of section 4901 of the BBA [Pub. L. 105−33] (111 Stat. 552)."

Amendment by section 1(a)(6) [title IX, Sec. 911(a)(2)] of Pub. L. 106−554 effective one year after Dec. 21, 2000, see section 1(a)(6) [title IX, Sec. 911(c)] of Pub. L. 106−554, set out as an Effective Date note under section 1320b−14 of this title.

Amendment by Pub. L. 106−354 applicable to medical assistance for items and services furnished on or after Oct. 1, 2000, without regard to whether final regulations to carry out such amendments have been promulgated by such date, see section 2(d) of Pub. L. 106−354, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1999 AMENDMENTS

Amendment by Pub. L. 106−170 applicable to medical assistance for items and services furnished on or after Oct. 1, 2000, see section 201(d) of Pub. L. 106−170, set out as a note under section 1396a of this title.

Amendment by section 121(a)(2) of Pub. L. 106−169 applicable to medical assistance for items and services furnished on or after Oct. 1, 1999, see section 121(b) of Pub. L. 106−169, set out as a note under section 1396a of this title.

Pub. L. 106−113, div. B, Sec. 1000(a)(6) [title VI, Sec. 605(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A−396, provided that: "The amendment made by subsection (a) [amending this section] takes effect on October 1, 1999, and applies to expenditures made on or after such date."

Pub. L. 106−113, div. B, Sec. 1000(a)(6) [title VI, Sec. 608(aa)], Nov. 29, 1999, 113 Stat. 1536, 1501A−398, provided that the amendment made by section 1000(a)(6) [title VI, Sec. 608(aa)(3)] is effective as if included in the enactment of BBA [the Balanced Budget Act of 1997, Pub. L. 105−33].

Amendment by section 1000(a)(6) [title VI, Sec. 608(l), (m)] of Pub. L. 106−113 effective Nov. 29, 1999, see section 1000(a)(6) [title VI, Sec. 608(bb)] of Pub. L. 106−113, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS

Section 162 of Pub. L. 105−100 provided that the amendment made by that section is effective as if included in the enactment of subtitle J (Secs. 4901−4923) of title IV of the Balanced Budget Act

of 1997, Pub. L. 105−33.

Amendment by section 4702(a) of Pub. L. 105−33 applicable to primary care case management services furnished on or after Oct. 1, 1997, subject to provisions relating to extension of effective date for State law amendments, and to nonapplication to waivers, see section 4710(b)(1) of Pub. L. 105−33, set out as a note under section 1396b of this title.

Amendment by section 4711(c)(1) of Pub. L. 105−33 effective Aug. 5, 1997, and applicable to payment for items and services furnished on or after Oct. 1, 1997, see section 4711(d) of Pub. L. 105−33, set out as a note under section 1396a of this title.

Section 4712(d)(2) of Pub. L. 105−33 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [Aug. 5, 1997]."

Amendment by section 4714(a)(2) of Pub. L. 105−33 applicable to payment for (and with respect to provider agreements with respect to) items and services furnished on or after Aug. 5, 1997, and to payment by a State for items and services furnished before such date if such payment is subject of lawsuit that is based on subsection (p) of this section and section 1396a(n) of this title and that is pending as of, or is initiated after Aug. 5, 1997, see section 4714(c) of Pub. L. 105−33, set out as a note under section 1396a of this title.

Section 4725(b)(2) of Pub. L. 105−33 provided that: "The amendments made by paragraph (1) [amending this section] shall

apply to −

"(A) items and services furnished on or after October 1, 1997;

"(B) payments made on a capitation or other risk−basis for coverage occurring on or after such date; and

"(C) payments attributable to DSH allotments for such States determined under section 1923(f) of such Act (42 U.S.C. 1396r−4(f)) for fiscal years beginning with fiscal year 1998."

Amendment by section 4911(a) of Pub. L. 105−33 applicable to medical assistance for items and services furnished on or after Oct. 1, 1997, see section 4911(c) of Pub. L. 105−33, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104−299 effective Oct. 1, 1996, see section 5 of Pub. L. 104−299, as amended, set out as a note under section 233 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103−296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103−296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13601(a) of Pub. L. 103−66 effective as if included in enactment of section 4721(a) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101−508, see section 13601(c) of Pub. L. 103−66, set out as a note under section 1396a of this title.

Amendment by section 13603(e) of Pub. L. 103−66 applicable to

medical assistance furnished on or after Jan. 1, 1994, without regard to whether or not final regulations to carry out the amendments by section 13603 of Pub. L. 103−66 have been promulgated by such date, see section 13603(f) of Pub. L. 103−66, set out as a note under section 1396a of this title.

Section 13605(b) of Pub. L. 103−66 provided that: "The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after October 1, 1993."

Section 13606(b) of Pub. L. 103−66 provided that: "The amendments made by subsection (a) [amending this section] shall apply to calendar quarters beginning on or after July 1, 1993."

Amendment by section 13631(f)(2) of Pub. L. 103−66 applicable, except as otherwise provided, to calendar quarters beginning on or after Oct. 1, 1993, without regard to whether or not final regulations to carry out the amendments by section 13631(f) of Pub. L. 103−66 have been promulgated by such date, see section 13631(f)(3) of Pub. L. 103−66, set out as a note under section 1396a of this title.

Section 13631(g)(2) of Pub. L. 103−66 provided that: "The amendments made by subparagraphs (A) and (B) of paragraph (1) [amending this section] shall first apply 90 days after the date the schedule referred to in subparagraphs (A)(i) and subparagraph (B)(iii) of section 1905(r)(1) of the Social Security Act [subsec. (r)(1)(B)(iii) of this section] (as amended by such respective subparagraphs) is first established."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4402(d)(2) of Pub. L. 101−508 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Jan. 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4402 of Pub. L. 101−508 have been promulgated by such date, see section 4402(e) of Pub. L. 101−508, set out as a note under section 1396a of this title.

Amendment by section 4501(a), (c), (e)(1) of Pub. L. 101−508 applicable to calendar quarters beginning on or after Jan. 1, 1991, without regard to whether or not regulations to implement the amendments by section 4501 of Pub. L. 101−508 are promulgated by such date, except that amendment by section 4501(e)(1) of Pub. L. 101−508 is applicable to determinations of income for months beginning with January 1991, see section 4501(f) of Pub. L. 101−508, set out as a note under section 1396a of this title.

Amendment by section 4601(a)(2) of Pub. L. 101−508 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4601 of Pub. L. 101−508 have been promulgated by such date, see section 4601(b) of Pub. L. 101−508, set out as a note under section 1396a of this title.

Amendment by section 4704(c), (d), (e)(1) of Pub. L. 101−508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101−239, see section 4704(f) of Pub. L. 101−508, set out as a note under section 1396a of this

title.

Section 4705(b) of Pub. L. 101−508 provided that: "The amendments made by subsection (a) [amending this section] shall be effective as if included in the amendments made by section 6408(c)(1) of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101−239, amending section 1396a of this title]."

Amendment by section 4711(a) of Pub. L. 101−508 applicable to home and community care furnished on or after July 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4711 of Pub. L. 101−508 have been promulgated by such date, see section 4711(e) of Pub. L. 101−508, set out as a note under section 1396a of this title.

Amendment by section 4712(a) of Pub. L. 101−508 applicable to community supported living arrangements services furnished on or after the later of July 1, 1991, or 30 days after the publication of regulations setting forth interim requirements under section 1396u(h) of this title without regard to whether or not final regulations to carry out the amendments by section 4712 of Pub. L. 101−508 have been promulgated by such date, see section 4712(c) of Pub. L. 101−508, set out as an Effective Date note under section 1396u of this title.

Amendment by section 4713(b) of Pub. L. 101−508 applicable to medical assistance furnished on or after Jan. 1, 1991, see section 4713(c) of Pub. L. 101−508, set out as a note under section 1396a of this title.

Section 4719(b) of Pub. L. 101−508 provided that: "The amendment

made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990]."

Section 4721(b) of Pub. L. 101−508 provided that: "The amendment made by this section [amending this section] shall become effective with respect to personal care services provided on or after October 1, 1994."

Section 4755(a)(1)(B) of Pub. L. 101−508 provided that: "The amendment made by subparagraph (A) [amending this section] shall be effective as if included in the enactment of the Deficit Reduction Act of 1984 [Pub. L. 98−369]."

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 6403(a), (c), (d)(2) of Pub. L. 101−239 effective Apr. 1, 1990, without regard to whether or not final regulations to carry out the amendments by section 6403 of Pub. L. 101−239 have been promulgated by such date, see section 6403(e) of Pub. L. 101−239, set out as a note under section 1396a of this title.

Amendment by section 6404(a), (b) of Pub. L. 101−239 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Apr. 1, 1990, without regard to whether or not final regulations to carry out the amendments by section 6404 of Pub. L. 101−239 have been promulgated by such date, see section 6404(d) of Pub. L. 101−239, set out as a note under section 1396a of this title.

Amendment by section 6405(a) of Pub. L. 101−239 effective with respect to services furnished by a certified pediatric nurse

practitioner or certified family nurse practitioner on or after July 1, 1990, see section 6405(c) of Pub. L. 101−239, set out as a note under section 1396a of this title.

Amendment by section 6408(d)(2), (4)(A), (B) of Pub. L. 101−239 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1990, without regard to whether or not final regulations to carry out the amendments by section 6408(d) of Pub. L. 101−239 have been promulgated by such date, see section 6408(d)(5) of Pub. L. 101−239, set out as a note under section 1396a of this title.

Amendment by Pub. L. 101−234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101−234, set out as a note under section 1320a−7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100−647 effective as if included in the enactment of section 301 of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100−360, see section 8434(c) of Pub. L. 100−647, set out as a note under section 1396a of this title.

Amendment by section 303(b)(2) of Pub. L. 100−485 applicable to payments under this subchapter for calendar quarters beginning on or after Apr. 1, 1990 (or, in the case of the Commonwealth of Kentucky, Oct. 1, 1990) (without regard to whether regulations to implement such amendment are promulgated by such date), with respect to families that cease to be eligible for aid under part A of subchapter IV of this chapter on or after that date, see section 303(f)(1) of Pub. L. 100−485, set out as a note under section 1396a

of this title.

Amendment by section 401(d)(2) of Pub. L. 100−485 effective Oct. 1, 1990, except as provided in subsec. (m)(2) of this section and not effective for Puerto Rico, Guam, American Samoa, and the Virgin Islands, until the date of repeal of limitations contained in section 1308(a) of this title on payments to such jurisdictions for purposes of making maintenance payments under this part and part E of this subchapter, see section 401(g) of Pub. L. 100−485, as amended, set out as a note under section 1396a of this title.

Amendment by section 608(d)(14)(A)−(G), (J) of Pub. L. 100−485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100−360, see section 608(g)(1) of Pub. L. 100−485, set out as a note under section 704 of this title.

Amendment by section 608(f)(3) of Pub. L. 100−485 effective Oct. 13, 1988, see section 608(g)(2) of Pub. L. 100−485, set out as a note under section 704 of this title.

Amendment by section 301(a)(2)−(d) of Pub. L. 100−360 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Jan. 1, 1989, without regard to whether or not final regulations to carry out such amendment have been promulgated by that date, with respect to medical assistance for monthly premiums under subchapter XVIII of this chapter for months beginning with January 1989, and items and services furnished on and after Jan. 1, 1989, see section 301(h) of Pub. L. 100−360, set out as a note under section 1396a of this

title.

Except as specifically provided in section 411 of Pub. L. 100−360, amendment by section 411(h)(4)(E), (k)(4), (8) of Pub. L. 100−360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100−203, effective as if included in the enactment of that provision in Pub. L. 100−203, see section 411(a) of Pub. L. 100−360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

Section 411(k)(14)(B) of Pub. L. 100−360 provided that: "The amendment made by subparagraph (A) [amending this section] shall take effect on the date of the enactment of this Act [July 1, 1988]."

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 4073(d) of Pub. L. 100−203 effective with respect to services performed on or after July 1, 1988, see section 4073(e) of Pub. L. 100−203, set out as a note under section 1395k of this title.

Section 4101(c)(3) of Pub. L. 100−203 provided that:

"(A) The amendments made by this subsection [amending this section and section 1396a of this title] shall apply to medical assistance furnished on or after October 1, 1988.

"(B) For purposes of section 1905(n)(2) of the Social Security Act [section 1396d(n)(2) of this title] (as amended by subsection (a) [probably means "subsection (c)"]) for medical assistance furnished during fiscal year 1989, any reference to 'age of 7' is

deemed to be a reference to 'age of 6'."

Section 4103(b) of Pub. L. 100−203 provided that:

"(1) The amendment made by subsection (a) [amending this section] applies (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for calendar quarters beginning on or after January 1, 1988, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.

"(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendment made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Dec. 22, 1987]."

Section 4105(b) of Pub. L. 100−203 provided that: "The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1988, without regard to whether regulations to implement such amendment are promulgated by such date."

Amendments by section 4211(e), (f), (h)(6) of Pub. L. 100−203 applicable to nursing facility services furnished on or after Oct.

1, 1990, without regard to whether regulations implementing such amendments are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100−203, as amended, set out as an Effective Date note under section 1396r of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99−514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99−272, see section 1895(e) of Pub. L. 99−514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Amendment by section 9403(b), (d), (g)(3) of Pub. L. 99−509 applicable to payments under this subchapter for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, see section 9403(h) of Pub. L. 99−509, set out as a note under section 1396a of this title.

Amendment by section 9404(b) of Pub. L. 99−509 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1987, without regard to whether regulations to implement such amendments are promulgated by such date, see section 9404(c) of Pub. L. 99−509, set out as a note under section 1396a of this title.

Amendment by section 9408(c)(1) of Pub. L. 99−509 applicable to services furnished on or after Oct. 21, 1986, see section 9408(d)

of Pub. L. 99−509, set out as a note under section 1396a of this title.

Section 9501(d)(1) of Pub. L. 99−272 provided that:

"(A) The amendments made by subsection (a) [amending this section] apply (except as provided under subparagraph (B)) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after the [sic] July 1, 1986, without regard to whether or not final regulations to carry out the amendments have been promulgated by that date.

"(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendments made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Apr. 7, 1986]."

Amendment by section 9505(a) of Pub. L. 99−272 applicable to medical assistance provided for hospice care furnished on or after Apr. 7, 1986, see section 9505(e) of Pub. L. 99−272, set out as a note under section 1396a of this title.

Section 9511(b) of Pub. L. 99−272, as amended by Pub. L. 99−509, title IX, Sec. 9435(d)(2), Oct. 21, 1986, 100 Stat. 2070, provided

that: "The amendment made by this section [amending this section] shall apply to services furnished on or after April 1, 1986, without regard to whether or not regulations to carry out the amendment have been promulgated by that date."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2335(f) of Pub. L. 98−369 effective July 18, 1984, see section 2335(g) of Pub. L. 98−369, set out as a note under section 1395f of this title.

Amendment by section 2340(b) of Pub. L. 98−369 effective July 18, 1984, see section 2340(c) of Pub. L. 98−369, set out as a note under section 1395x of this title.

Amendment by section 2361(b) of Pub. L. 98−369 applicable to calendar quarters beginning on or after Oct. 1, 1984, without regard to whether or not final regulations to carry out the amendment have been promulgated by such date, except as otherwise provided, see section 2361(d) of Pub. L. 98−369, set out as a note under section 1396a of this title.

Section 2371(b) of Pub. L. 98−369 provided that: "The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [July 18, 1984]."

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 136(c) of Pub. L. 97−248 effective Oct. 1, 1982, see section 136(e) of Pub. L. 97−248, set out as a note under section 1301 of this title.

Amendment by section 137(b)(17), (18) of Pub. L. 97−248 effective

as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97−35, see section 137(d)(2) of Pub. L. 97−248, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2172(b) of Pub. L. 97−35 effective Aug. 13, 1981, see section 2172(c) of Pub. L. 97−35, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96−499, see section 965(c) of Pub. L. 96−499, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 8(d)(1) of Pub. L. 95−292 provided that: "The amendments made by subsections (a) and (b) [amending this section] shall become effective on July 1, 1978."

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95−210 applicable to medical assistance provided, under a State plan approved under subchapter XIX of this chapter, on and after the first day of the first calendar quarter that begins more than six months after Dec. 13, 1977, with exception for plans requiring State legislation, see section 2(f) of Pub. L. 95−210, set out as a note under section 1395cc of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by section 13(a)(13)−(18) of Pub. L. 93−233 effective

with respect to payments under section 1396b of this title for calendar quarters commencing after Dec. 31, 1973, see section 13(d) of Pub. L. 93−233, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 212(b) of Pub. L. 92−603 provided that: "The provisions of subsection (e) of section 1905 of the Social Security Act [subsec. (e) of this section] (as added by subsection (a) of this section) shall be applicable in the case of services performed on or after the date of enactment of this Act [Oct. 30, 1972]."

Amendment by section 247(b) of Pub. L. 92−603 effective with respect to services furnished after Dec. 31, 1972, see section 247(c) of Pub. L. 92−603, set out as a note under section 1395f of this title.

Section 275(b) of Pub. L. 92−603 provided that: "The amendment made by this section [amending this section] shall be effective with respect to services furnished after June 30, 1973."

Section 297(b) of Pub. L. 92−603 provided that: "The amendment made by this section [amending this section] shall apply with respect to services furnished after December 31, 1972."

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92−223 effective Jan. 1, 1972, see section 4(d) of Pub. L. 92−223, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 248(e) of Pub. L. 90−248 provided that the amendment made

by that section is effective with respect to quarters after 1967.

CONSTRUCTION OF 1999 AMENDMENT

Amendment by Pub. L. 106−170 to be executed as if Pub. L. 106−169 had been enacted after the enactment of Pub. L. 106−170, see section 121(c)(1) of Pub. L. 106−169, set out as a note under section 1396a of this title.

ALASKA FMAPS

Pub. L. 106−554, Sec. 1(a)(6) [title VII, Sec. 706], Dec. 21, 2000, 114 Stat. 2763, 2763A−577, provided that: "Notwithstanding the first sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)), only with respect to each of fiscal years 2001 through 2005, for purposes of titles XIX and XXI of the Social Security Act [this subchapter and subchapter XXI of this chapter], the State percentage used to determine the Federal medical assistance percentage for Alaska shall be that percentage which bears the same ratio to 45 percent as the square of the adjusted per capita income of Alaska (determined by dividing the State's 3−year average per capita income by 1.05) bears to the square of the per capita income of the 50 States."

Section 4725(a) of Pub. L. 105−33 provided that: "Notwithstanding the first sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)), the Federal medical assistance percentage determined under such sentence for Alaska shall be 59.8 percent but only with respect to −

"(1) items and services furnished under a State plan under title XIX [this subchapter] or under a State child health plan

under title XXI of such Act [subchapter XXI of this chapter] during fiscal years 1998, 1999, and 2000;

"(2) payments made on a capitation or other risk−basis under such titles for coverage occurring during such period; and

"(3) payments under title XIX of such Act attributable to DSH allotments for such State determined under section 1923(f) of such Act (42 U.S.C. 1396r−4(f)) for such fiscal years."

EPSDT BENEFIT STUDY AND REPORT

Section 4744 of Pub. L. 105−33 provided that:

"(a) Study. −

"(1) In general. − The Secretary of Health and Human Services, in consultation with Governors, directors of State medicaid programs, the American Academy of Actuaries, and representatives of appropriate provider and beneficiary organizations, shall conduct a study of the provision of early and periodic screening, diagnostic, and treatment services under the medicaid program under title XIX of the Social Security Act [this subchapter] in accordance with the requirements of section 1905(r) of such Act (42 U.S.C. 1396d(r)).

"(2) Required contents. − The study conducted under paragraph (1) shall include examination of the actuarial value of the provision of such services under the medicaid program and an examination of the portions of such actuarial value that are attributable to paragraph (5) of section 1905(r) of such Act and to the second sentence of such section.

"(b) Report. − Not later than 12 months after the date of the

enactment of this Act [Aug. 5, 1997], the Secretary of Health and Human Services shall submit a report to Congress on the results of the study conducted under subsection (a)."

REFERENCES TO PROVISIONS OF PART A OF SUBCHAPTER IV CONSIDERED REFERENCES TO SUCH PROVISIONS AS IN EFFECT JULY 16, 1996

For provisions that certain references to provisions of part A (Sec. 601 et seq.) of subchapter IV of this chapter be considered references to such provisions of part A as in effect July 16, 1996, see section 1396u−1(a) of this title.

LIMITATION ON DISALLOWANCES OR DEFERRAL OF FEDERAL FINANCIAL PARTICIPATION FOR CERTAIN INPATIENT PSYCHIATRIC HOSPITAL SERVICES FOR INDIVIDUALS UNDER AGE 21

Section 4706 of Pub. L. 101−508 provided that:

"(a) In General. − (1) If the Secretary of Health and Human Services makes a determination that a psychiatric facility has failed to comply with certification of need requirements for inpatient psychiatric hospital services for individuals under age 21 pursuant to section 1905(h) of the Social Security Act [subsec. (h) of this section], and such determination has not been subject to a final judicial decision, any disallowance or deferral of Federal financial participation under such Act [this chapter] based on such determination shall only apply to the period of time beginning with the first day of noncompliance and ending with the date by which the psychiatric facility develops documentation (using plan of care or utilization review procedures) of the need for inpatient care with respect to such individuals.

"(2) Any disallowance of Federal financial participation under title XIX of the Social Security Act [this subchapter] relating to the failure of a psychiatric facility to comply with certification of need requirements −

"(A) shall not exceed 25 percent of the amount of Federal financial participation for the period described in paragraph (1); and

"(B) shall not apply to any fiscal year before the fiscal year that is 3 years before the fiscal year in which the determination of noncompliance described in paragraph (1) is made.

"(b) Effective Date. − Subsection (a) shall apply to disallowance actions and deferrals of Federal financial participation with respect to services provided before the date of enactment of this Act [Nov. 5, 1990]."

INTERMEDIATE CARE FACILITY; ACCESS AND VISITATION RIGHTS

Section 411(l)(3)(C)(i), formerly Sec. 411(l)(3)(C), of Pub. L. 100−360, as redesignated by Pub. L. 100−485, title VI, Sec. 608(d)(27)(E), Oct. 13, 1988, 102 Stat. 2423, provided that:

"Effective as of the date of the enactment of this Act [July 1, 1988] and until the effective date of section 1919(c) of such Act [section 1396r(c) of this title, see Effective Date note set out under section 1396r of this title], section 1905(c) of the Social Security Act [subsec. (c) of this section] is deemed to include the requirement described in section 1919(c)(3)(A) of such Act (as inserted by section 4211(a)(3) of OBRA)."

REGULATIONS FOR INTERMEDIATE CARE FACILITIES FOR MENTALLY RETARDED

Section 9514 of Pub. L. 99−272 provided that: "The Secretary of Health and Human Services shall promulgate proposed regulations revising standards for intermediate care facilities for the mentally retarded under title XIX of the Social Security Act [this subchapter] within 60 days after the date of the enactment of this Act [Apr. 7, 1986]."

LIFE SAFETY CODE RECOGNITION

Section 9515 of Pub. L. 99−272 provided that: "For purposes of section 1905(c) of the Social Security Act [subsec. (c) of this section], an intermediate care facility for the mentally retarded (as defined in section 1905(d) of such Act) which meets the requirements of the relevant sections of the 1985 edition of the Life Safety Code of the National Fire Protection Association shall be deemed to meet the fire safety requirements for intermediate care facilities for the mentally retarded until such time as the Secretary specifies a later edition of the Life Safety Code for purposes of such section, or the Secretary determines that more stringent standards are necessary to protect the safety of residents of such facilities."

STUDY OF FEDERAL MEDICAL ASSISTANCE PERCENTAGE FORMULA AND OF ADJUSTMENTS OF TARGET AMOUNTS FOR FEDERAL MEDICAID EXPENDITURES; REPORT TO CONGRESS

Section 2165 of Pub. L. 97−35 directed the Comptroller General, in consultation with the Advisory Committee for Intergovernmental Relations, to study the Federal medical assistance percentage formula as applicable to distribution of Federal funds to States,

with a view to revising the medicaid matching formula so as to take into account factors which might result in a more equitable distribution of Federal funds to States under this chapter, and to report to Congress on such study not later than Oct. 1, 1982.

COSTS CHARGED TO PERSONAL FUNDS OF PATIENTS IN INTERMEDIATE CARE FACILITIES; COSTS INCLUDED IN CHARGES FOR SERVICES; REGULATIONS

Section 8(c), (d)(2) of Pub. L. 95−292 required the Secretary of Health, Education, and Welfare to issue regulations, within 90 days after enactment of Pub. L. 95−292 but not later than July 1, 1978, defining those costs that may be charged to the personal funds of patients in intermediate care facilities who are individuals receiving medical assistance under a State plan approved under title XIX of the Social Security Act, and those costs that are to be included in the reasonable cost or reasonable charge for intermediate care facility services. See section 1302 of this title.

−SECREF−

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 256b, 280c−6, 290bb−1, 290jj, 300ff−52, 603, 618, 657, 674, 705, 1318, 1395i−2, 1395s, 1395v, 1395w−4, 1395w−21, 1395ss, 1396a, 1396b, 1396i, 1396n, 1396o, 1396p, 1396r, 1396r−1, 1396r−1b, 1396r−6, 1396r−8, 1396s, 1396t, 1396u−2, 1397ee, 1397jj, 11398 of this title; title 25 section 1645.

−FOOTNOTE−

(!1) See References in Text note below.

(!2) Probably means the subsec. (aa) of section 1396a relating to certain breast or cervical cancer patients.

(!3) So in original. Probably should be "a".

(!4) So in original. Probably should be clause "(iii),". See References in Text note below.

(!5) See References in Text note below.

(!6) So in original. The comma probably should be a period.

(!7) So in original. The words "of such paragraph" probably should follow "subparagraph (B)".

(!8) So in original. Probably should be "or section".

−End−

−CITE−

42 USC Sec. 1396e 01/06/03

−EXPCITE−

TITLE 42 − THE PUBLIC HEALTH AND WELFARE

CHAPTER 7 − SOCIAL SECURITY

SUBCHAPTER XIX − GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

−HEAD−

Sec. 1396e. Enrollment of individuals under group health plans

−STATUTE−

(a) Requirements of each State plan; guidelines

Each State plan −

(1) may implement guidelines established by the Secretary, consistent with subsection (b) of this section, to identify those cases in which enrollment of an individual otherwise entitled to medical assistance under this subchapter in a group health plan

(in which the individual is otherwise eligible to be enrolled) is cost−effective (as defined in subsection (e)(2) of this section);

(2) may require, in case of an individual so identified and as a condition of the individual being or remaining eligible for medical assistance under this subchapter and subject to subsection (b)(2) of this section, notwithstanding any other provision of this subchapter, that the individual (or in the case of a child, the child's parent) apply for enrollment in the group health plan; and

(3) in the case of such enrollment (except as provided in subsection (c)(1)(B) of this section), shall provide for payment of all enrollee premiums for such enrollment and all deductibles, coinsurance, and other cost−sharing obligations for items and services otherwise covered under the State plan under this subchapter (exceeding the amount otherwise permitted under section 1396o of this title), and shall treat coverage under the group health plan as a third party liability (under section 1396a(a)(25) of this title).

(b) Timing of enrollment; failure to enroll

(1) In establishing guidelines under subsection (a)(1) of this section, the Secretary shall take into account that an individual may only be eligible to enroll in group health plans at limited times and only if other individuals (not entitled to medical assistance under the plan) are also enrolled in the plan simultaneously.

(2) If a parent of a child fails to enroll the child in a group

health plan in accordance with subsection (a)(2) of this section, such failure shall not affect the child's eligibility for benefits under this subchapter.

(c) Premiums considered payments for medical assistance; eligibility

(1)(A) In the case of payments of premiums, deductibles, coinsurance, and other cost−sharing obligations under this section shall be considered, for purposes of section 1396b(a) of this title, to be payments for medical assistance.

(B) If all members of a family are not eligible for medical assistance under this subchapter and enrollment of the members so eligible in a group health plan is not possible without also enrolling members not so eligible −

(i) payment of premiums for enrollment of such other members shall be treated as payments for medical assistance for eligible individuals, if it would be cost−effective (taking into account payment of all such premiums), but

(ii) payment of deductibles, coinsurance, and other cost−sharing obligations for such other members shall not be treated as payments for medical assistance for eligible individuals.

(2) The fact that an individual is enrolled in a group health plan under this section shall not change the individual's eligibility for benefits under the State plan, except insofar as section 1396a(a)(25) of this title provides that payment for such benefits shall first be made by such plan.

(d) Repealed. Pub. L. 105−33, title IV, Sec. 4741(b)(2), Aug. 5, 1997, 111 Stat. 523

(e) Definitions

In this section:

(1) The term "group health plan" has the meaning given such term in section 5000(b)(1) of the Internal Revenue Code of 1986, and includes the provision of continuation coverage by such a plan pursuant to title XXII of the Public Health Service Act [42 U.S.C. 300bb−1 et seq.], section 4980B of the Internal Revenue Code of 1986, or title VI (!1) of the Employee Retirement Income Security Act of 1974.

(2) The term "cost−effective" means, as established by the Secretary, that the reduction in expenditures under this subchapter with respect to an individual who is enrolled in a group health plan is likely to be greater than the additional expenditures for premiums and cost−sharing required under this section with respect to such enrollment.

−SOURCE−

(Aug. 14, 1935, ch. 531, title XIX, Sec. 1906, as added Pub. L. 101−508, title IV, Sec. 4402(a)(2), Nov. 5, 1990, 104 Stat. 1388−161; amended Pub. L. 105−33, title IV, Sec. 4741(b), Aug. 5, 1997, 111 Stat. 523.)

−REFTEXT−

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (e)(1), is classified generally to Title 26, Internal Revenue Code.

The Public Health Service Act, referred to in subsec. (e)(1), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Title XXII of the Act is classified generally to subchapter XX (Sec. 300bb−1 et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (e)(1), is Pub. L. 93−406, Sept. 2, 1974, 88 Stat. 829, as amended. Title VI of the Act probably means part 6 of subtitle B of title I of the Act which is classified generally to part 6 (Sec. 1161 et seq.) of subtitle B of subchapter I of chapter 18 of Title 29, Labor, because the Act has no title VI. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

−MISC1−

PRIOR PROVISIONS

A prior section 1396e, act Aug. 14, 1935, ch. 531, title XIX, Sec. 1906, as added Jan. 2, 1968, Pub. L. 90−248, title II, Sec. 226, 81 Stat. 903, created Advisory Council on Medical Assistance, set forth composition of Council, term of membership of members, and purposes of Council, and provided for compensation of members, prior to repeal by Pub. L. 92−603, title II, Sec. 287, Oct. 30, 1972, 86 Stat. 1457, effective on the first day of the third calendar month following Oct. 30, 1972.

AMENDMENTS

1997 − Subsec. (a). Pub. L. 105−33, Sec. 4741(b)(1), in

introductory provisions, substituted "Each" for "For purposes of section 1396a(a)(25)(G) of this title and subject to subsection (d) of this section, each" and, in pars. (1) and (2), substituted "may" for "shall".

Subsec. (d). Pub. L. 105−33, Sec. 4741(b)(2), struck out subsec. (d) which read as follows:

"(1) In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1315 of this title, the Secretary shall require the State to meet the requirements of this section in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this subchapter.

"(2) This section, and section 1396a(a)(25)(G) of this title, shall only apply to a State that is one of the 50 States or the District of Columbia."

EFFECTIVE DATE

Section applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Jan. 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4402 of Pub. L. 101−508 have been promulgated by such date, see section 4402(e) of Pub. L. 101−508, set out as an Effective Date of 1990 Amendment note under section 1396a of this title.

−SECREF−

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1396a, 1396b of this

title.

−FOOTNOTE−

(!1) See References in Text note below.

−End−

−CITE−

42 USC Sec. 1396f 01/06/03

−EXPCITE−

TITLE 42 − THE PUBLIC HEALTH AND WELFARE

CHAPTER 7 − SOCIAL SECURITY

SUBCHAPTER XIX − GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

−HEAD−

Sec. 1396f. Observance of religious beliefs

−STATUTE−

Nothing in this subchapter shall be construed to require any
State which has a plan approved under this subchapter to compel any
person to undergo any medical screening, examination, diagnosis, or
treatment or to accept any other health care or services provided
under such plan for any purpose (other than for the purpose of
discovering and preventing the spread of infection or contagious
disease or for the purpose of protecting environmental health), if
such person objects (or, in case such person is a child, his parent
or guardian objects) thereto on religious grounds.

−SOURCE−

(Aug. 14, 1935, ch. 531, title XIX, Sec. 1907, as added Pub. L.
90−248, title II, Sec. 232, Jan. 2, 1968, 81 Stat. 905.)

−End−

−CITE−

42 USC Sec. 1396g 01/06/03

−EXPCITE−

TITLE 42 − THE PUBLIC HEALTH AND WELFARE

CHAPTER 7 − SOCIAL SECURITY

SUBCHAPTER XIX − GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

−HEAD−

Sec. 1396g. State programs for licensing of administrators of nursing homes

−STATUTE−

(a) Nature of State program

For purposes of section 1396a(a)(29) of this title, a "State program for the licensing of administrators of nursing homes" is a program which provides that no nursing home within the State may operate except under the supervision of an administrator licensed in the manner provided in this section.

(b) Licensing by State agency or board representative of concerned professions and institutions

Licensing of nursing home administrators shall be carried out by the agency of the State responsible for licensing under the healing arts licensing act of the State, or, in the absence of such act or such an agency, a board representative of the professions and institutions concerned with care of chronically ill and infirm aged patients and established to carry out the purposes of this section.

(c) Functions and duties of State agency or board

It shall be the function and duty of such agency or board to −

(1) develop, impose, and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to insure that nursing home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;

(2) develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;

(3) issue licenses to individuals determined, after the application of such techniques, to meet such standards, and revoke or suspend licenses previously issued by the board in any case where the individual holding any such license is determined substantially to have failed to conform to the requirements of such standards;

(4) establish and carry out procedures designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards;

(5) receive, investigate, and take appropriate action with respect to, any charge or complaint filed with the board to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements of such standards; and

(6) conduct a continuing study and investigation of nursing

homes and administrators of nursing homes within the State with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes who have been licensed as such.

(d) Waiver of standards other than good character or suitability standards

No State shall be considered to have failed to comply with the provisions of section 1396a(a)(29) of this title because the agency or board of such State (established pursuant to subsection (b) of this section) shall have granted any waiver, with respect to any individual who, during all of the three calendar years immediately preceding the calendar year in which the requirements prescribed in section 1396a(a)(29) of this title are first met by the State, has served as a nursing home administrator, of any of the standards developed, imposed, and enforced by such agency or board pursuant to subsection (c) of this section.

(e) "Nursing home" and "nursing home administrator" defined

As used in this section, the term −

(1) "nursing home" means any institution or facility defined as such for licensing purposes under State law, or, if State law does not employ the term nursing home, the equivalent term or terms as determined by the Secretary, but does not include a religious nonmedical health care institution (as defined in section 1395x(ss)(1) of this title).(!1)

(2) "nursing home administrator" means any individual who is

charged with the general administration of a nursing home whether or not such individual has an ownership interest in such home and whether or not his functions and duties are shared with one or more other individuals.

−SOURCE−

(Aug. 14, 1935, ch. 531, title XIX, Sec. 1908, as added Pub. L. 90−248, title II, Sec. 236(b), Jan. 2, 1968, 81 Stat. 908; amended Pub. L. 92−603, title II, Secs. 268(b), 269, 274(b), Oct. 30, 1972, 86 Stat. 1451, 1452; Pub. L. 93−233, Sec. 18(y)(3), Dec. 31, 1973, 87 Stat. 973; Pub. L. 104−193, title IX, Sec. 913, Aug. 22, 1996, 110 Stat. 2354; Pub. L. 105−33, title IV, Sec. 4454(b)(2), Aug. 5, 1997, 111 Stat. 431.)

−STATAMEND−

REPEAL OF SECTION

Pub. L. 101−508, title IV, Sec. 4801(e)(11), Nov. 5, 1990, 104 Stat. 1388−217, provided that, effective on the date on which the Secretary promulgates standards regarding the qualifications of nursing facility administrators under section 1396r(f)(4) of this title, this section is repealed.

−COD−

CODIFICATION

Another section 1908 of act Aug. 14, 1935, was renumbered section 1908A and is classified to section 1396g−1 of this title.

−MISC1−

AMENDMENTS

1997 − Subsec. (e)(1). Pub. L. 105−33 which directed substitution

of "a religious nonmedical health care institution (as defined in section 1395x(ss)(1) of this title)." for "a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts; and" in "Section 1908(e)(1) (42 U.S.C. 1396g−1(e)(1))" of the Social Security Act, was executed by making the substitution in subsec. (e)(1) of this section to reflect the probable intent of Congress, because section 1396g−1 of this title, which is also section 1908 of the Social Security Act, does not have a subsec. (e).

1996 − Subsec. (e)(1). Pub. L. 104−193, which directed substitution of "The Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc." for "The First Church of Christ, Scientist, Boston, Massachusetts" in section 1908(e)(1) of the Social Security Act (42 U.S.C. 1396g−1(e)(1)) could not be executed to this section or section 1396g−1 of this title, both of which are section 1908. Section 1396g−1 does not have a subsec. (e) and subsec. (e)(1) of this section does not contain the quoted language with the word "the" capitalized.

1973 − Subsec. (d). Pub. L. 93−233 struck out second sentence reading substantially the same as the first sentence but containing the following additional text reading "other than such standards as relate to good character or suitability if −

"(1) such waiver is for a period which ends after being in effect for two years or on June 30, 1972, whichever is earlier, and

"(2) there is provided in the State (during all of the period

for which waiver is in effect), a program of training and instruction designed to enable all individuals with respect to whom any such waiver is granted, to attain the qualifications necessary in order to meet such standards" and also "calendar year" instead of "three calendar years" and reference to "subsection (c)(1) of this section" instead of "subsection (c) of this section".

Subsec. (e). Pub. L. 93−233 redesignated subsec. (g) as (e), and repealed prior subsec. (e) relating to authorization of appropriations for fiscal years 1968 through 1972 and to limitation of grants.

Subsec. (f). Pub. L. 93−233 repealed subsec. (f) providing for creation of National Advisory Council on Nursing Home Administration and for its composition, appointment of members, the Chairman, representation of interests, functions and duties, compensation and travel expenses, technical assistance, availability of assistance and data, and termination date of Dec. 31, 1971.

Subsec. (g). Pub. L. 93−233, redesignated subsec. (g) as (e).

1972 − Subsec. (d). Pub. L. 92−603, Secs. 269, 274(b), inserted references to the grant of waivers to individuals who, during all of the three calendar years immediately preceding the calendar year in which the requirements prescribed in section 1396a(a)(29) of this title are first met by the State, have served as nursing home administrators and substituted "subsection (c)(1)" for "subsection (b)(1)".

Subsec. (g)(1). Pub. L. 92−603, Sec. 268(b), inserted ", but does not include a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts" after "Secretary".

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105−33 effective Aug. 5, 1997, and applicable to items and services furnished on or after such date, with provision that Secretary of Health and Human Services issue regulations to carry out such amendment by not later than July 1, 1998, see section 4454(d) of Pub. L. 105−33, set out as an Effective Date note under section 1395i−5 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 913 of Pub. L. 104−193 provided that the amendment made by that section is effective Jan. 1, 1997.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 268(b) of Pub. L. 92−603 effective Oct. 30, 1972, see section 268(c) of Pub. L. 92−603, set out as a note under section 1396a of this title.

EFFECTIVE DATE

Section 236(c) of Pub. L. 90−248 provided that: "Except as otherwise specified in the text thereof, the amendments made by this section [enacting this section and amending section 1396a of this title] shall take effect on July 1, 1970."

−SECREF−

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1396a of this title; title

29 section 1169.

−FOOTNOTE−

(!1) So in original. The period probably should be "; and".

−End−

−CITE−

42 USC Sec. 1396g−1 01/06/03

−EXPCITE−

TITLE 42 − THE PUBLIC HEALTH AND WELFARE

CHAPTER 7 − SOCIAL SECURITY

SUBCHAPTER XIX − GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

−HEAD−

Sec. 1396g−1. Required laws relating to medical child support

−STATUTE−

(a) In general

The laws relating to medical child support, which a State is required to have in effect under section 1396a(a)(60) of this title, are as follows:

(1) A law that prohibits an insurer from denying enrollment of a child under the health coverage of the child's parent on the ground that −

(A) the child was born out of wedlock,

(B) the child is not claimed as a dependent on the parent's Federal income tax return, or

(C) the child does not reside with the parent or in the insurer's service area.

(2) In any case in which a parent is required by a court or

administrative order to provide health coverage for a child and the parent is eligible for family health coverage through an insurer, a law that requires such insurer −

(A) to permit such parent to enroll under such family coverage any such child who is otherwise eligible for such coverage (without regard to any enrollment season restrictions);

(B) if such a parent is enrolled but fails to make application to obtain coverage of such child, to enroll such child under such family coverage upon application by the child's other parent or by the State agency administering the program under this subchapter or part D of subchapter IV of this chapter; and

(C) not to disenroll (or eliminate coverage of) such a child unless the insurer is provided satisfactory written evidence that −

(i) such court or administrative order is no longer in effect, or

(ii) the child is or will be enrolled in comparable health coverage through another insurer which will take effect not later than the effective date of such disenrollment.

(3) In any case in which a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage through an employer doing business in the State, a law that requires such employer −

(A) to permit such parent to enroll under such family coverage any such child who is otherwise eligible for such coverage (without regard to any enrollment season restrictions);

(B) if such a parent is enrolled but fails to make application to obtain coverage of such child, to enroll such child under such family coverage upon application by the child's other parent or by the State agency administering the program under this subchapter or part D of subchapter IV of this chapter; and

(C) not to disenroll (or eliminate coverage of) any such child unless −

(i) the employer is provided satisfactory written evidence that −

(I) such court or administrative order is no longer in effect, or

(II) the child is or will be enrolled in comparable health coverage which will take effect not later than the effective date of such disenrollment, or

(ii) the employer has eliminated family health coverage for all of its employees; and

(D) to withhold from such employee's compensation the employee's share (if any) of premiums for health coverage (except that the amount so withheld may not exceed the maximum amount permitted to be withheld under section 1673(b) of title 15), and to pay such share of premiums to the insurer, except

that the Secretary may provide by regulation for appropriate circumstances under which an employer may withhold less than such employee's share of such premiums.

(4) A law that prohibits an insurer from imposing requirements on a State agency, which has been assigned the rights of an individual eligible for medical assistance under this subchapter and covered for health benefits from the insurer, that are different from requirements applicable to an agent or assignee of any other individual so covered.

(5) A law that requires an insurer, in any case in which a child has health coverage through the insurer of a noncustodial parent −

(A) to provide such information to the custodial parent as may be necessary for the child to obtain benefits through such coverage;

(B) to permit the custodial parent (or provider, with the custodial parent's approval) to submit claims for covered services without the approval of the noncustodial parent; and

(C) to make payment on claims submitted in accordance with subparagraph (B) directly to such custodial parent, the provider, or the State agency.

(6) A law that permits the State agency under this subchapter to garnish the wages, salary, or other employment income of, and requires withholding amounts from State tax refunds to, any person who −

(A) is required by court or administrative order to provide

coverage of the costs of health services to a child who is
eligible for medical assistance under this subchapter,
(B) has received payment from a third party for the costs of
such services to such child, but
(C) has not used such payments to reimburse, as appropriate,
either the other parent or guardian of such child or the
provider of such services,
to the extent necessary to reimburse the State agency for
expenditures for such costs under its plan under this subchapter,
but any claims for current or past−due child support shall take
priority over any such claims for the costs of such services.
(b) "Insurer" defined
For purposes of this section, the term "insurer" includes a group
health plan, as defined in section 1167(1) of title 29, a health
maintenance organization, and an entity offering a service benefit
plan.
−SOURCE−
(Aug. 14, 1935, ch. 531, title XIX, Sec. 1908A, formerly Sec. 1908,
as added Pub. L. 103−66, title XIII, Sec. 13623(b), Aug. 10, 1993,
107 Stat. 633, renumbered Sec. 1908A, Pub. L. 106−113, div. B, Sec.
1000(a)(6) [title VI, Sec. 608(y)(1)], Nov. 29, 1999, 113 Stat.
1536, 1501A−398.)
−REFTEXT−
REFERENCES IN TEXT
Part D of subchapter IV of this chapter, referred to in subsec.
(a)(2)(B), (3)(B), is classified to section 651 et seq. of this

title.

−MISC1−

EFFECTIVE DATE

Section 13623(c) of Pub. L. 103−66 provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending section 1396a of this title] apply to calendar quarters beginning on or after April 1, 1994, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

"(2) In the case of a State plan under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Aug. 10, 1993]. For purposes of the preceding sentence, in the case of a State that has a 2−year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature."

−SECREF−

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1396a of this title.

−End−

−CITE−

42 USC Sec. 1396h 01/06/03

−EXPCITE−

TITLE 42 − THE PUBLIC HEALTH AND WELFARE

CHAPTER 7 − SOCIAL SECURITY

SUBCHAPTER XIX − GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

−HEAD−

Sec. 1396h. Transferred

−COD−

CODIFICATION

Section, act Aug. 14, 1935, ch. 531, title XIX, Sec. 1909, as added and amended Oct. 30, 1972, Pub. L. 92−603, title II, Secs. 242(c), 278(b)(9), 86 Stat. 1419, 1454; Oct. 25, 1977, Pub. L. 95−142, Sec. 4(b), 91 Stat. 1181; Dec. 5, 1980, Pub. L. 96−499, title IX, Sec. 917, 94 Stat. 2625; Aug. 18, 1987, Pub. L. 100−93, Sec. 4(a)−(c), 101 Stat. 688, 689, which related to criminal penalties for acts involving Medicare and State health care programs, was renumbered section 1128B of title XI of act Aug. 14, 1935, by section 4(d) of Pub. L. 100−93 and transferred to section 1320a−7b of this title.

−End−

−CITE−

42 USC Sec. 1396i 01/06/03

−EXPCITE−

TITLE 42 − THE PUBLIC HEALTH AND WELFARE

CHAPTER 7 − SOCIAL SECURITY

SUBCHAPTER XIX − GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

−HEAD−

Sec. 1396i. Certification and approval of rural health clinics and intermediate care facilities for mentally retarded

−STATUTE−

(a)(1) Whenever the Secretary certifies a facility in a State to be qualified as a rural health clinic under subchapter XVIII of this chapter, such facility shall be deemed to meet the standards for certification as a rural health clinic for purposes of providing rural health clinic services under this title.

(2) The Secretary shall notify the State agency administering the medical assistance plan of his approval or disapproval of any facility in that State which has applied for certification by him as a qualified rural health clinic.

(b)(1) The Secretary may cancel approval of any intermediate care facility for the mentally retarded at any time if he finds on the basis of a determination made by him as provided in section 1396a(a)(33)(B) of this title that a facility fails to meet the requirements contained in section 1396a(a)(31) of this title or section 1396d(d) of this title, or if he finds grounds for termination of his agreement with the facility pursuant to section 1395cc(b) of this title. In that event the Secretary shall notify the State agency and the intermediate care facility for the mentally retarded that approval of eligibility of the facility to participate in the programs established by this subchapter and

subchapter XVIII of this chapter shall be terminated at a time specified by the Secretary. The approval of eligibility of any such facility to participate in such programs may not be reinstated unless the Secretary finds that the reason for termination has been removed and there is reasonable assurance that it will not recur.

(2) Any intermediate care facility for the mentally retarded which is dissatisfied with a determination by the Secretary that it no longer qualifies as a (!1) intermediate care facility for the mentally retarded for purposes of this subchapter, shall be entitled to a hearing by the Secretary to the same extent as is provided in section 405(b) of this title and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title, except that, in so applying such sections and in applying section 405(l) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively. Any agreement between such facility and the State agency shall remain in effect until the period for filing a request for a hearing has expired or, if a request has been filed, until a decision has been made by the Secretary; except that the agreement shall not be extended if the Secretary makes a written determination, specifying the reasons therefor, that the continuation of provider status constitutes an immediate and serious threat to the health and safety of patients, and the Secretary certifies that the facility has been notified of its

deficiencies and has failed to correct them.

−SOURCE−

(Aug. 14, 1935, ch. 531, title XIX, Sec. 1910, as added and amended Pub. L. 92−603, title II, Secs. 249A(a), 278(b)(12), Oct. 30, 1972, 86 Stat. 1426, 1454; Pub. L. 95−210, Sec. 2(d), Dec. 13, 1977, 91 Stat. 1489; Pub. L. 96−499, title IX, Sec. 916(b)(2), Dec. 5, 1980, 94 Stat. 2624; Pub. L. 100−203, title IV, Sec. 4212(e)(3), Dec. 22, 1987, 101 Stat. 1330−213; Pub. L. 100−360, title IV, Sec. 411(l)(6)(F), July 1, 1988, as added Pub. L. 100−485, title VI, Sec. 608(d)(27)(J), Oct. 13, 1988, 102 Stat. 2423; Pub. L. 101−239, title VI, Sec. 6901(d)(5), Dec. 19, 1989, 103 Stat. 2301; Pub. L. 103−296, title I, Sec. 108(d)(4), Aug. 15, 1994, 108 Stat. 1486; Pub. L. 106−113, div. B, Sec. 1000(a)(6) [title VI, Sec. 608(n)], Nov. 29, 1999, 113 Stat. 1536, 1501A−397.)

−MISC1−

AMENDMENTS

1999 − Pub. L. 106−113 struck out "of" after "approval of" in section catchline.

1994 − Subsec. (b)(2). Pub. L. 103−296 inserted before period at end of first sentence ", except that, in so applying such sections and in applying section 405(l) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively".

1989 − Pub. L. 101−239, Sec. 6901(d)(5)(A), substituted "rural

health clinics and intermediate care facilities for the mentally retarded" for "rural health clinics" in section catchline.

Subsec. (b)(1). Pub. L. 101−239, Sec. 6901(d)(5)(B)−(D), substituted "any intermediate care facility for the mentally retarded" for "any skilled nursing or intermediate care facility", "section 1396a(a)(31) of this title or section 1396d(d) of this title" for "section 1396a(a)(28) of this title or section 1396r of this title or section 1396d(c) of this title", and "the intermediate care facility for the mentally retarded" for "the skilled nursing facility or intermediate care facility".

Subsec. (b)(2). Pub. L. 101−239, Sec. 6901(d)(5)(D), substituted "intermediate care facility for the mentally retarded" for "skilled nursing facility or intermediate care facility" in two places.

1988 − Subsec. (b)(1). Pub. L. 100−360, Sec. 411(l)(6)(F), as added by Pub. L. 100−485, Sec. 608(d)(27)(J), inserted "or section 1396r of this title" after "1396a(a)(28) of this title".

1987 − Pub. L. 100−203 struck out "skilled nursing facilities and" before "of rural" in section catchline, redesignated subsecs. (b) and (c) as (a) and (b), respectively, and struck out former subsec. (a) which related to certification and approval of skilled nursing facilities.

1980 − Subsec. (c). Pub. L. 96−499 added subsec. (c).

1977 − Pub. L. 95−210 substituted "facilities and of rural health clinics" for "facilities" in section catchline, redesignated existing subsecs. (a) and (b) as (a)(1) and (2), respectively, and added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103−296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103−296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101−239 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100−203, see section 6901(d)(6) of Pub. L. 101−239, set out as a note under section 1395i−3 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100−485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100−360, see section 608(g)(1) of Pub. L. 100−485, set out as a note under section 704 of this title.

Except as specifically provided in section 411 of Pub. L. 100−360, amendment by Pub. L. 100−360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100−203, effective as if included in the enactment of that provision in Pub. L. 100−203, see section 411(a) of Pub. L. 100−360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100−203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section

1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100−203, as amended, set out as an Effective Date note under section 1396r of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95−210 applicable to medical assistance provided, under a State plan approved under subchapter XIX of this chapter, on and after first day of first calendar quarter that begins more than six months after Dec. 13, 1977, with exception for plans requiring State legislation, see section 2(f) of Pub. L. 95−210, set out as a note under section 1395cc of this title.

EFFECTIVE DATE

Section effective with respect to agreements filed with Secretary under section 1395cc of this title by skilled nursing facilities before, on, or after Oct. 30, 1972, but accepted by him on or after such date, see section 249A(e) of Pub. L. 92−603, set out as an Effective Date of 1972 Amendment note under section 1395cc of this title.

−SECREF−

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1396r−3 of this title.

−FOOTNOTE−

(!1) So in original. Probably should be "an".

−End−

−CITE−

42 USC Sec. 1396j 01/06/03

−EXPCITE−

TITLE 42 − THE PUBLIC HEALTH AND WELFARE

CHAPTER 7 − SOCIAL SECURITY

SUBCHAPTER XIX − GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

−HEAD−

Sec. 1396j. Indian health service facilities

−STATUTE−

(a) Eligibility for reimbursement for medical assistance

A facility of the Indian Health Service (including a hospital, nursing facility, or any other type of facility which provides services of a type otherwise covered under the State plan), whether operated by such Service or by an Indian tribe or tribal organization (as those terms are defined in section 1603 of title 25), shall be eligible for reimbursement for medical assistance provided under a State plan if and for so long as it meets all of the conditions and requirements which are applicable generally to such facilities under this subchapter.

(b) Facilities deemed to meet requirements upon submission of acceptable plan for achieving compliance

Notwithstanding subsection (a) of this section, a facility of the Indian Health Service (including a hospital, nursing facility, or any other type of facility which provides services of a type otherwise covered under the State plan) which does not meet all of the conditions and requirements of this title which are applicable generally to such facility, but which submits to the Secretary within six months after September 30, 1976, an acceptable plan for achieving compliance with such conditions and requirements, shall

be deemed to meet such conditions and requirements (and to be eligible for reimbursement under this subchapter), without regard to the extent of its actual compliance with such conditions and requirements, during the first twelve months after the month in which such plan is submitted.

(c) Agreement to reimburse State agency for providing care and services

The Secretary is authorized to enter into agreements with the State agency for the purpose of reimbursing such agency for health care and services provided in Indian Health Service facilities to Indians who are eligible for medical assistance under the State plan.

(d) Cross reference

For provisions relating to the authority of certain Indian tribes, tribal organizations, and Alaska Native health organizations to elect to directly bill for, and receive payment for, health care services provided by a hospital or clinic of such tribes or organizations and for which payment may be made under this subchapter, see section 1645 of title 25.

−SOURCE−

(Aug. 14, 1935, ch. 531, title XIX, Sec. 1911, as added Pub. L. 94−437, title IV, Sec. 402(a), Sept. 30, 1976, 90 Stat. 1409; amended Pub. L. 100−203, title IV, Secs. 4118(f)(1), 4211(h)(8), Dec. 22, 1987, 101 Stat. 1330−155, 1330−206; Pub. L. 100−360, title IV, Sec. 411(k)(10)(E), July 1, 1988, 102 Stat. 796; Pub. L. 106−417, Sec. 3(b)(2), Nov. 1, 2000, 114 Stat. 1815.)

−MISC1−

AMENDMENTS

2000 − Subsec. (d). Pub. L. 106−417 added subsec. (d).

1988 − Subsecs. (a), (b). Pub. L. 100−360, Sec. 411(k)(10)(E), made technical correction to directory language of Pub. L. 100−203, Sec. 4118(f)(1)(A), see 1987 Amendment note below.

1987 − Subsecs. (a), (b). Pub. L. 100−203, Sec. 4118(f)(1)(A), as amended by Pub. L. 100−360, Sec. 411(k)(10)(E), substituted ", nursing facility, or any other type of facility which provides services of a type otherwise covered under the State plan" for "or nursing facility".

Pub. L. 100−203, Sec. 4211(h)(8), substituted "or nursing facility" for ", intermediate care facility, or skilled nursing facility" wherever appearing.

Subsec. (c). Pub. L. 100−203, Sec. 4118(f)(1)(B), added subsec. (c).

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106−417 effective Oct. 1, 2000, see section 3(c) of Pub. L. 106−417, set out as a note under section 1645 of Title 25, Indians.

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100−360, amendment by Pub. L. 100−360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100−203, effective as if included in the enactment of that provision in Pub. L. 100−203, see section 411(a) of Pub. L. 100−360, set out as a

Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4118(f)(2) of Pub. L. 100−203 provided that: "The amendments made by paragraph (1) [amending this section] shall apply to health care services performed on or after the date of the enactment of this Act [Dec. 22, 1987]."

Amendment by section 4211(h)(8) of Pub. L. 100−203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100−203, as amended, set out as an Effective Date note under section 1396r of this title.

AGREEMENTS TO REIMBURSE STATE AGENCY FOR HEALTH CARE AND SERVICES PROVIDED BY AGENCY TO INDIANS

Pub. L. 94−437, title IV, Sec. 402(b), Sept. 30, 1976, 90 Stat. 1409, which authorized Secretary to enter into agreements to reimburse State agencies for health care and services provided in Service facilities to Indians eligible for medical assistance under this subchapter, was repealed by Pub. L. 100−713, title IV, Sec. 401(b), Nov. 23, 1988, 102 Stat. 4818, applicable to services performed on or after the Nov. 23, 1988.

PAYMENTS INTO SPECIAL FUND TO IMPROVE INDIAN HEALTH SERVICE FACILITIES TO ACHIEVE COMPLIANCE WITH CONDITIONS AND REQUIREMENTS; CERTIFICATION OF COMPLIANCE BY SECRETARY

Section 402(c) of Pub. L. 94−437, as amended by Pub. L. 100−713, title IV, Sec. 401(a), Nov. 23, 1988, 102 Stat. 4818, provided that payments to which any Indian Health Service facility was entitled by reason of this section were to be placed in a special fund of the Secretary for improvements of facilities of the Service to comply with requirements of this subchapter, required minimum funding for each service unit making collections for such facilities, and provided for section 402(c) of Pub. L. 94−437 to cease to apply when Secretary determined that substantially all such facilities complied with requirements of this subchapter, prior to the general amendment of section 402 of Pub. L. 94−437 by Pub. L. 102−573, title IV, Sec. 401(b)(1), Oct. 29, 1992, 106 Stat. 4565. Similar provisions are contained in section 402(a) of Pub. L. 94−437 which is classified to section 1642(a) of Title 25, Indians.

MEDICAID PAYMENTS NOT CONSIDERED IN DETERMINING APPROPRIATIONS FOR INDIAN HEALTH CARE

Section 402(d) of Pub. L. 94−437 provided that any payments received for services provided recipients under this section were not to be considered in determining appropriations for the provision of health care and services to Indians, prior to the general amendment of section 402 of Pub. L. 94−437 by Pub. L. 102−573, title IV, Sec. 401(b)(1), Oct. 29, 1992, 106 Stat. 4565. Similar provisions are contained in section 402(b) of Pub. L. 94−437 which is classified to section 1642(b) of Title 25, Indians.

−SECREF−

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 290ff of this title; title 25 sections 1642, 1645.

−End−

−CITE−

42 USC Sec. 1396k 01/06/03

−EXPCITE−

TITLE 42 − THE PUBLIC HEALTH AND WELFARE

CHAPTER 7 − SOCIAL SECURITY

SUBCHAPTER XIX − GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

−HEAD−

Sec. 1396k. Assignment, enforcement, and collection of rights of payments for medical care; establishment of procedures pursuant to State plan; amounts retained by State

−STATUTE−

(a) For the purpose of assisting in the collection of medical support payments and other payments for medical care owed to recipients of medical assistance under the State plan approved under this subchapter, a State plan for medical assistance shall −

(1) provide that, as a condition of eligibility for medical assistance under the State plan to an individual who has the legal capacity to execute an assignment for himself, the individual is required −

(A) to assign the State any rights, of the individual or of any other person who is eligible for medical assistance under this subchapter and on whose behalf the individual has the legal authority to execute an assignment of such rights, to

support (specified as support for the purpose of medical care by a court or administrative order) and to payment for medical care from any third party;

(B) to cooperate with the State (i) in establishing the paternity of such person (referred to in subparagraph (A)) if the person is a child born out of wedlock, and (ii) in obtaining support and payments (described in subparagraph (A)) for himself and for such person, unless (in either case) the individual is described in section 1396a(l)(1)(A) of this title or the individual is found to have good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the individuals involved; and

(C) to cooperate with the State in identifying, and providing information to assist the State in pursuing, any third party who may be liable to pay for care and services available under the plan, unless such individual has good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the individuals involved; and

(2) provide for entering into cooperative arrangements (including financial arrangements), with any appropriate agency of any State (including, with respect to the enforcement and collection of rights of payment for medical care by or through a

parent, with a State's agency established or designated under section 654(3) of this title) and with appropriate courts and law enforcement officials, to assist the agency or agencies administering the State plan with respect to (A) the enforcement and collection of rights to support or payment assigned under this section and (B) any other matters of common concern.

(b) Such part of any amount collected by the State under an assignment made under the provisions of this section shall be retained by the State as is necessary to reimburse it for medical assistance payments made on behalf of an individual with respect to whom such assignment was executed (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing of such medical assistance), and the remainder of such amount collected shall be paid to such individual.

−SOURCE−

(Aug. 14, 1935, ch. 531, title XIX, Sec. 1912, as added Pub. L. 95−142, Sec. 11(b), Oct. 25, 1977, 91 Stat. 1196; amended Pub. L. 98−369, div. B, title III, Sec. 2367(b), July 18, 1984, 98 Stat. 1109; Pub. L. 99−272, title IX, Sec. 9503(e), Apr. 7, 1986, 100 Stat. 207; Pub. L. 101−508, title IV, Sec. 4606(a), Nov. 5, 1990, 104 Stat. 1388−170.)

−MISC1−

AMENDMENTS

1990 − Subsec. (a)(1)(B). Pub. L. 101−508 inserted "the individual is described in section 1396a(l)(1)(A) of this title or" after "unless (in either case)".

1986 − Subsec. (a)(1)(C). Pub. L. 99−272 added subpar. (C).

1984 − Subsec. (a). Pub. L. 98−369 substituted "State plan for medical assistance shall" for "State plan for medical assistance may".

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4606(b) of Pub. L. 101−508 provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99−272 applicable to calendar quarters beginning on or after Apr. 7, 1986, except as otherwise provided, see section 9503(g)(1), (2) of Pub. L. 99−272, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98−369 effective Oct. 1, 1984, except as otherwise provided, see section 2367(c) of Pub. L. 98−369, set out as a note under section 1396a of this title.

−SECREF−

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 652, 654, 666, 1396a, 1396b of this title; title 29 section 1169.

−End−

−CITE−

42 USC Sec. 1396l 01/06/03

−EXPCITE−

TITLE 42 − THE PUBLIC HEALTH AND WELFARE

CHAPTER 7 − SOCIAL SECURITY

SUBCHAPTER XIX − GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

−HEAD−

Sec. 1396l. Hospital providers of nursing facility services

−STATUTE−

(a) Notwithstanding any other provision of this subchapter, payment may be made, in accordance with this section, under a State plan approved under this subchapter for nursing facility services furnished by a hospital which has in effect an agreement under section 1395tt of this title and which, with respect to the provision of such services, meets the requirements of subsections (b) through (d) of section 1396r of this title.

(b)(1) Except as provided in paragraph (3), payment to any such hospital, for any nursing facility services furnished pursuant to subsection (a) of this section, shall be at a rate equal to the average rate per patient−day paid for routine services during the previous calendar year under the State plan to nursing facilities, respectively,(!1) located in the State in which the hospital is located. The reasonable cost of ancillary services shall be determined in the same manner as the reasonable cost of ancillary services provided for inpatient hospital services.

(2) With respect to any period for which a hospital has an agreement under section 1395tt of this title, in order to allocate routine costs between hospital and long−term care services, the total reimbursement for routine services due from all classes of long−term care patients (including subchapter XVIII of this

chapter, this subchapter, and private pay patients) shall be subtracted from the hospital total routine costs before calculations are made to determine reimbursement for routine hospital services under the State plan.

(3) Payment to all such hospitals, for any nursing facility services furnished pursuant to subsection (a) of this section, may be made at a payment rate established by the State in accordance with the requirements of section 1396a(a)(13)(A) of this title.

−SOURCE−

(Aug. 14, 1935, ch. 531, title XIX, Sec. 1913, as added Pub. L. 96−499, title IX, Sec. 904(b), Dec. 5, 1980, 94 Stat. 2617; amended Pub. L. 98−369, div. B, title III, Sec. 2369(a), July 18, 1984, 98 Stat. 1110; Pub. L. 100−203, title IV, Sec. 4211(h)(9), Dec. 22, 1987, 101 Stat. 1330−206.)

−MISC1−

AMENDMENTS

1987 − Pub. L. 100−203, Sec. 4211(h)(9)(A), substituted "nursing facility services" for "skilled nursing and intermediate care services" in section catchline.

Subsec. (a). Pub. L. 100−203, Sec. 4211(h)(9)(B), substituted "nursing facility services" for "skilled nursing facility services and intermediate care facility services" and inserted "and which, with respect to the provision of such services, meets the requirements of subsections (b) through (d) of section 1396r of this title" before period at end.

Subsec. (b)(1). Pub. L. 100−203, Sec. 4211(h)(9)(C), substituted

"nursing facility services" for "skilled nursing or intermediate care facility services" and "nursing facilities" for "skilled nursing and intermediate care facilities".

Subsec. (b)(3). Pub. L. 100−203, Sec. 4211(h)(9)(D), substituted "nursing facility services" for "skilled nursing or intermediate care facility services".

1984 − Subsec. (b)(1). Pub. L. 98−369, Sec. 2369(a)(1), substituted "Except as provided in paragraph (3), payment" for "Payment".

Subsec. (b)(3). Pub. L. 98−369, Sec. 2369(a)(2), added par. (3).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100−203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100−203, as amended, set out as an Effective Date note under section 1396r of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2369(b) of Pub. L. 98−369 provided that: "The amendments made by this section [amending this section] shall apply to payments for services furnished after the date of the enactment of this Act [July 18, 1984]."

EFFECTIVE DATE

Section effective on date on which final regulations to implement the section are first issued, see section 904(d) of Pub. L. 96−499,

set out as an Effective Date note under section 1395tt of this

title.

−FOOTNOTE−

(!1) So in original, ", respectively," probably should not appear.

−End−

−CITE−

42 USC Sec. 1396m 01/06/03

−EXPCITE−

TITLE 42 − THE PUBLIC HEALTH AND WELFARE

CHAPTER 7 − SOCIAL SECURITY

SUBCHAPTER XIX − GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

−HEAD−

Sec. 1396m. Withholding of Federal share of payments for certain

medicare providers

−STATUTE−

(a) Adjustment of Federal matching payments

The Secretary may adjust, in accordance with this section, the

Federal matching payment to a State with respect to expenditures

for medical assistance for care or services furnished in any

quarter by −

(1) an institution (A) which has or previously had in effect an

agreement with the Secretary under section 1395cc of this title;

and (B)(i) from which the Secretary has been unable to recover

overpayments made under subchapter XVIII of this chapter, or (ii)

from which the Secretary has been unable to collect the

information necessary to enable him to determine the amount (if

any) of the overpayments made to such institution under subchapter XVIII of this chapter; and

(2) any person (A) who (i) has previously accepted payment on the basis of an assignment under section 1395u(b)(3)(B)(ii) of this title, and (ii) during the annual period immediately preceding such quarter submitted no claims for payment under subchapter XVIII of this chapter, or submitted claims for payment under subchapter XVIII of this chapter which aggregated less than the amount of overpayments made to him, and (B)(i) from whom the Secretary has been unable to recover overpayments received in violation of the terms of such assignment, or (ii) from whom the Secretary has been unable to collect the information necessary to enable him to determine the amount (if any) of the overpayments made to such person under subchapter XVIII of this chapter.

(b) Reductions in payments to and by States

The Secretary may (subject to the remaining provisions of this section) reduce payment to a State under this subchapter for any quarter by an amount equal to the lesser of the Federal matching share of payments to any institution or person specified in subsection (a) of this section, or the total overpayments to such institution or person under subchapter XVIII of this chapter, and may require the State to reduce its payment to such institution or person by such amount.

(c) Notice

The Secretary shall not make any adjustment in the payment to a State, nor require any adjustment in the payment to an institution

or person, pursuant to subsection (b) of this section until after he has provided adequate notice (which shall be not less than 60 days) to the State agency and the institution or person.

(d) Regulations

The Secretary shall by regulation provide procedures for implementation of this section, which procedures shall (1) determine the amount of the Federal payment to which the institution or person would otherwise be entitled under this section which shall be treated as a setoff against overpayments under subchapter XVIII of this chapter, and (2) assure the restoration to the institution or person of amounts withheld under this section which are ultimately determined to be in excess of overpayments under subchapter XVIII of this chapter and to which the institution or person would otherwise be entitled under this subchapter.

(e) Restoration to trust funds of recovered amounts

The Secretary shall restore to the trust funds established under sections 1395i and 1395t of this title, as appropriate, amounts recovered under this section as setoffs against overpayments under subchapter XVIII of this chapter.

(f) Liability of States for withheld payments

Notwithstanding any other provision of this subchapter, an institution or person shall not be entitled to recover from any State any amount in payment for medical care and services under this subchapter which is withheld by the State agency pursuant to an order by the Secretary under subsection (b) of this section.

−SOURCE−

(Aug. 14, 1935, ch. 531, title XIX, Sec. 1914, as added Pub. L. 96−499, title IX, Sec. 905(d), Dec. 5, 1980, 94 Stat. 2618.)

−SECREF−

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1396b of this title.

−End−

−CITE−

42 USC Sec. 1396n 01/06/03

−EXPCITE−

TITLE 42 − THE PUBLIC HEALTH AND WELFARE

CHAPTER 7 − SOCIAL SECURITY

SUBCHAPTER XIX − GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

−HEAD−

Sec. 1396n. Compliance with State plan and payment provisions

−STATUTE−

(a) Activities deemed as compliance

A State shall not be deemed to be out of compliance with the requirements of paragraphs (1), (10), or (23) of section 1396a(a) of this title solely by reason of the fact that the State (or any political subdivision thereof) −

(1) has entered into −

(A) a contract with an organization which has agreed to provide care and services in addition to those offered under the State plan to individuals eligible for medical assistance who reside in the geographic area served by such organization

and who elect to obtain such care and services from such organization, or by reason of the fact that the plan provides for payment for rural health clinic services only if those services are provided by a rural health clinic; or

(B) arrangements through a competitive bidding process or otherwise for the purchase of laboratory services referred to in section 1396d(a)(3) of this title or medical devices if the Secretary has found that −

(i) adequate services or devices will be available under such arrangements, and

(ii) any such laboratory services will be provided only through laboratories −

(I) which meet the applicable requirements of section 1395x(e)(9) of this title or paragraphs (16) and (17) of section 1395x(s) of this title, and such additional requirements as the Secretary may require, and

(II) no more than 75 percent of whose charges for such services are for services provided to individuals who are entitled to benefits under this subchapter or under part A or part B of subchapter XVIII of this chapter; or

(2) restricts for a reasonable period of time the provider or providers from which an individual (eligible for medical assistance for items or services under the State plan) can receive such items or services, if −

(A) the State has found, after notice and opportunity for a hearing (in accordance with procedures established by the

State), that the individual has utilized such items or services at a frequency or amount not medically necessary (as determined in accordance with utilization guidelines established by the State), and

(B) under such restriction, individuals eligible for medical assistance for such services have reasonable access (taking into account geographic location and reasonable travel time) to such services of adequate quality.

(b) Waivers to promote cost−effectiveness and efficiency

The Secretary, to the extent he finds it to be cost−effective and efficient and not inconsistent with the purposes of this subchapter, may waive such requirements of section 1396a of this title (other than subsection (s)) (other than sections 1396a(a)(15), 1396a(bb), and 1396a(a)(10)(A) of this title insofar as it requires provision of the care and services described in section 1396d(a)(2)(C) of this title) as may be necessary for a State −

(1) to implement a primary care case−management system or a specialty physician services arrangement which restricts the provider from (or through) whom an individual (eligible for medical assistance under this subchapter) can obtain medical care services (other than in emergency circumstances), if such restriction does not substantially impair access to such services of adequate quality where medically necessary,

(2) to allow a locality to act as a central broker in assisting individuals (eligible for medical assistance under this

subchapter) in selecting among competing health care plans, if such restriction does not substantially impair access to services of adequate quality where medically necessary,

(3) to share (through provision of additional services) with recipients of medical assistance under the State plan cost savings resulting from use by the recipient of more cost−effective medical care, and

(4) to restrict the provider from (or through) whom an individual (eligible for medical assistance under this subchapter) can obtain services (other than in emergency circumstances) to providers or practitioners who undertake to provide such services and who meet, accept, and comply with the reimbursement, quality, and utilization standards under the State plan, which standards shall be consistent with the requirements of section 1396r−4 of this title and are consistent with access, quality, and efficient and economic provision of covered care and services, if such restriction does not discriminate among classes of providers on grounds unrelated to their demonstrated effectiveness and efficiency in providing those services and if providers under such restriction are paid on a timely basis in the same manner as health care practitioners must be paid under section 1396a(a)(37)(A) of this title.

No waiver under this subsection may restrict the choice of the individual in receiving services under section 1396d(a)(4)(C) of this title.

(c) Waiver respecting medical assistance requirement in State plan;

scope, etc.; "habilitation services" defined; imposition of certain regulatory limits prohibited; computation of expenditures for certain disabled patients; coordinated services; substitution of participants

(1) The Secretary may by waiver provide that a State plan approved under this subchapter may include as "medical assistance" under such plan payment for part or all of the cost of home or community−based services (other than room and board) approved by the Secretary which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would require the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded the cost of which could be reimbursed under the State plan. For purposes of this subsection, the term "room and board" shall not include an amount established under a method determined by the State to reflect the portion of costs of rent and food attributable to an unrelated personal caregiver who is residing in the same household with an individual who, but for the assistance of such caregiver, would require admission to a hospital, nursing facility, or intermediate care facility for the mentally retarded.

(2) A waiver shall not be granted under this subsection unless the State provides assurances satisfactory to the Secretary that −

(A) necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of individuals provided services under the waiver and to

assure financial accountability for funds expended with respect to such services;

(B) the State will provide, with respect to individuals who −

(i) are entitled to medical assistance for inpatient hospital services, nursing facility services, or services in an intermediate care facility for the mentally retarded under the State plan,

(ii) may require such services, and

(iii) may be eligible for such home or community−based care under such waiver,

for an evaluation of the need for inpatient hospital services, nursing facility services, or services in an intermediate care facility for the mentally retarded;

(C) such individuals who are determined to be likely to require the level of care provided in a hospital, nursing facility, or intermediate care facility for the mentally retarded are informed of the feasible alternatives, if available under the waiver, at the choice of such individuals, to the provision of inpatient hospital services, nursing facility services, or services in an intermediate care facility for the mentally retarded;

(D) under such waiver the average per capita expenditure estimated by the State in any fiscal year for medical assistance provided with respect to such individuals does not exceed 100 percent of the average per capita expenditure that the State reasonably estimates would have been made in that fiscal year for expenditures under the State plan for such individuals if the

waiver had not been granted; and

(E) the State will provide to the Secretary annually, consistent with a data collection plan designed by the Secretary, information on the impact of the waiver granted under this subsection on the type and amount of medical assistance provided under the State plan and on the health and welfare of recipients.

(3) A waiver granted under this subsection may include a waiver of the requirements of section 1396a(a)(1) of this title (relating to statewideness), section 1396a(a)(10)(B) of this title (relating to comparability), and section 1396a(a)(10)(C)(i)(III) of this title (relating to income and resource rules applicable in the community). A waiver under this subsection shall be for an initial term of three years and, upon the request of a State, shall be extended for additional five−year periods unless the Secretary determines that for the previous waiver period the assurances provided under paragraph (2) have not been met. A waiver may provide, with respect to post−eligibility treatment of income of all individuals receiving services under that waiver, that the maximum amount of the individual's income which may be disregarded for any month for the maintenance needs of the individual may be an amount greater than the maximum allowed for that purpose under regulations in effect on July 1, 1985.

(4) A waiver granted under this subsection may, consistent with paragraph (2) −

(A) limit the individuals provided benefits under such waiver to individuals with respect to whom the State has determined that

there is a reasonable expectation that the amount of medical assistance provided with respect to the individual under such waiver will not exceed the amount of such medical assistance provided for such individual if the waiver did not apply, and

(B) provide medical assistance to individuals (to the extent consistent with written plans of care, which are subject to the approval of the State) for case management services, homemaker/home health aide services and personal care services, adult day health services, habilitation services, respite care, and such other services requested by the State as the Secretary may approve and for day treatment or other partial hospitalization services, psychosocial rehabilitation services, and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness.

Except as provided under paragraph (2)(D), the Secretary may not restrict the number of hours or days of respite care in any period which a State may provide under a waiver under this subsection.

(5) For purposes of paragraph (4)(B), the term "habilitation services" −

(A) means services designed to assist individuals in acquiring, retaining, and improving the self−help, socialization, and adaptive skills necessary to reside successfully in home and community based settings; and

(B) includes (except as provided in subparagraph (C)) prevocational, educational, and supported employment services; but

(C) does not include −

(i) special education and related services (as defined in paragraphs (16) and (17) of section 1401(a) (!1) of title 20) which otherwise are available to the individual through a local educational agency; and

(ii) vocational rehabilitation services which otherwise are available to the individual through a program funded under section 730 of title 29.

(6) The Secretary may not require, as a condition of approval of a waiver under this section under paragraph (2)(D), that the actual total expenditures for home and community−based services under the waiver (and a claim for Federal financial participation in expenditures for the services) cannot exceed the approved estimates for these services. The Secretary may not deny Federal financial payment with respect to services under such a waiver on the ground that, in order to comply with paragraph (2)(D), a State has failed to comply with such a requirement.

(7)(A) In making estimates under paragraph (2)(D) in the case of a waiver that applies only to individuals with a particular illness or condition who are inpatients in, or who would require the level of care provided in, hospitals, nursing facilities, or intermediate care facilities for the mentally retarded, the State may determine the average per capita expenditure that would have been made in a fiscal year for those individuals under the State plan separately from the expenditures for other individuals who are inpatients in, or who would require the level of care provided in, those

respective facilities.

(B) In making estimates under paragraph (2)(D) in the case of a waiver that applies only to individuals with developmental disabilities who are inpatients in a nursing facility and whom the State has determined, on the basis of an evaluation under paragraph (2)(B), to need the level of services provided by an intermediate care facility for the mentally retarded, the State may determine the average per capita expenditures that would have been made in a fiscal year for those individuals under the State plan on the basis of the average per capita expenditures under the State plan for services to individuals who are inpatients in an intermediate care facility for the mentally retarded, without regard to the availability of beds for such inpatients.

(C) In making estimates under paragraph (2)(D) in the case of a waiver to the extent that it applies to individuals with mental retardation or a related condition who are resident in an intermediate care facility for the mentally retarded the participation of which under the State plan is terminated, the State may determine the average per capita expenditures that would have been made in a fiscal year for those individuals without regard to any such termination.

(8) The State agency administering the plan under this subchapter may, whenever appropriate, enter into cooperative arrangements with the State agency responsible for administering the program for children with special health care needs under subchapter V of this chapter in order to assure improved access to coordinated services

to meet the needs of such children.

(9) In the case of any waiver under this subsection which contains a limit on the number of individuals who shall receive home or community−based services, the State may substitute additional individuals to receive such services to replace any individuals who die or become ineligible for services under the State plan.

(10) The Secretary shall not limit to fewer than 200 the number of individuals in the State who may receive home and community−based services under a waiver under this subsection.

(d) Home and community−based services for elderly

(1) Subject to paragraph (2), the Secretary shall grant a waiver to provide that a State plan approved under this subchapter shall include as "medical assistance" under such plan payment for part or all of the cost of home or community−based services (other than room and board) which are provided pursuant to a written plan of care to individuals 65 years of age or older with respect to whom there has been a determination that but for the provision of such services the individuals would be likely to require the level of care provided in a skilled nursing facility or intermediate care facility the cost of which could be reimbursed under the State plan. For purposes of this subsection, the term "room and board" shall not include an amount established under a method determined by the State to reflect the portion of costs of rent and food attributable to an unrelated personal caregiver who is residing in the same household with an individual who, but for the assistance

of such caregiver, would require admission to a hospital, nursing facility, or intermediate care facility for the mentally retarded.

(2) A waiver shall not be granted under this subsection unless the State provides assurances satisfactory to the Secretary that −

(A) necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of individuals provided services under the waiver and to assure financial accountability for funds expended with respect to such services;

(B) with respect to individuals 65 years of age or older who −

(i) are entitled to medical assistance for skilled nursing or intermediate care facility services under the State plan,

(ii) may require such services, and

(iii) may be eligible for such home or community−based services under such waiver,

the State will provide for an evaluation of the need for such skilled nursing facility or intermediate care facility services; and

(C) such individuals who are determined to be likely to require the level of care provided in a skilled nursing facility or intermediate care facility are informed of the feasible alternatives to the provision of skilled nursing facility or intermediate care facility services, which such individuals may choose if available under the waiver.

Each State with a waiver under this subsection shall provide to the Secretary annually, consistent with a reasonable data collection

plan designed by the Secretary, information on the impact of the waiver granted under this subsection on the type and amount of medical assistance provided under the State plan and on the health and welfare of recipients.

(3) A waiver granted under this subsection may include a waiver of the requirements of section 1396a(a)(1) of this title (relating to statewideness), section 1396a(a)(10)(B) of this title (relating to comparability), and section 1396a(a)(10)(C)(i)(III) of this title (relating to income and resource rules applicable in the community). Subject to a termination by the State (with notice to the Secretary) at any time, a waiver under this subsection shall be for an initial term of 3 years and, upon the request of a State, shall be extended for additional 5−year periods unless the Secretary determines that for the previous waiver period the assurances provided under paragraph (2) have not been met. A waiver may provide, with respect to post−eligibility treatment of income of all individuals receiving services under the waiver, that the maximum amount of the individual's income which may be disregarded for any month is equal to the amount that may be allowed for that purpose under a waiver under subsection (c) of this section.

(4) A waiver under this subsection may, consistent with paragraph (2), provide medical assistance to individuals for case management services, homemaker/home health aide services and personal care services, adult day health services, respite care, and other medical and social services that can contribute to the health and well−being of individuals and their ability to reside in a

community−based care setting.

(5)(A) In the case of a State having a waiver approved under this subsection, notwithstanding any other provision of section 1396b of this title to the contrary, the total amount expended by the State for medical assistance with respect to skilled nursing facility services, intermediate care facility services, and home and community−based services under the State plan for individuals 65 years of age or older during a waiver year under this subsection may not exceed the projected amount determined under subparagraph (B).

(B) For purposes of subparagraph (A), the projected amount under this subparagraph is the sum of the following:

(i) The aggregate amount of the State's medical assistance under this subchapter for skilled nursing facility services and intermediate care facility services furnished to individuals who have attained the age of 65 for the base year increased by a percentage which is equal to the lesser of 7 percent times the number of years (rounded to the nearest quarter of a year) beginning after the base year and ending at the end of the waiver year involved or the sum of −

(I) the percentage increase (based on an appropriate market−basket index representing the costs of elements of such services) between the beginning of the base year and the beginning of the waiver year involved, plus

(II) the percentage increase between the beginning of the base year and the beginning of the waiver year involved in the

number of residents in the State who have attained the age of 65, plus

(III) 2 percent for each year (rounded to the nearest quarter of a year) beginning after the base year and ending at the end of the waiver year.

(ii) The aggregate amount of the State's medical assistance under this subchapter for home and community−based services for individuals who have attained the age of 65 for the base year increased by a percentage which is equal to the lesser of 7 percent times the number of years (rounded to the nearest quarter of a year) beginning after the base year and ending at the end of the waiver year involved or the sum of −

(I) the percentage increase (based on an appropriate market−basket index representing the costs of elements of such services) between the beginning of the base year and the beginning of the waiver year involved, plus

(II) the percentage increase between the beginning of the base year and the beginning of the waiver year involved in the number of residents in the State who have attained the age of 65, plus

(III) 2 percent for each year (rounded to the nearest quarter of a year) beginning after the base year and ending at the end of the waiver year.

(iii) The Secretary shall develop and promulgate by regulation (by not later than October 1, 1989) −

(I) a method, based on an index of appropriately weighted

indicators of changes in the wages and prices of the mix of goods and services which comprise both skilled nursing facility services and intermediate care facility services (regardless of the source of payment for such services), for projecting the percentage increase for purposes of clause (i)(I);

(II) a method, based on an index of appropriately weighted indicators of changes in the wages and prices of the mix of goods and services which comprise home and community−based services (regardless of the source of payment for such services), for projecting the percentage increase for purposes of clause (ii)(I); and

(III) a method for projecting, on a State specific basis, the percentage increase in the number of residents in each State who are over 65 years of age for any period.

The Secretary shall develop (by not later than October 1, 1989) a method for projecting, on a State−specific basis, the percentage increase in the number of residents in each State who are over 65 years of age for any period. Effective on and after the date the Secretary promulgates the regulation under clause (iii), any reference in this subparagraph to the "lesser of 7 percent" shall be deemed to be a reference to the "greater of 7 percent".

(iv) If there is enacted after December 22, 1987, an Act which amends this subchapter whose provisions become effective on or after such date and which results in an increase in the aggregate amount of medical assistance under this subchapter for nursing facility services and home and community−based services for

individuals who have attained the age of 65 years, the Secretary, at the request of a State with a waiver under this subsection for a waiver year or years and in close consultation with the State, shall adjust the projected amount computed under this subparagraph for the waiver year or years to take into account such increase.

(C) In this paragraph:

(i) The term "home and community−based services" includes services described in sections 1396d(a)(7) and 1396d(a)(8) of this title, services described in subsection (c)(4)(B) of this section, services described in paragraph (4), and personal care services.

(ii)(I) Subject to subclause (II), the term "base year" means the most recent year (ending before December 22, 1987) for which actual final expenditures under this subchapter have been reported to, and accepted by, the Secretary.

(II) For purposes of subparagraph (C), in the case of a State that does not report expenditures on the basis of the age categories described in such subparagraph for a year ending before December 22, 1987, the term "base year" means fiscal year 1989.

(iii) The term "intermediate care facility services" does not include services furnished in an institution certified in accordance with section 1396d(d) of this title.

(6)(A) A determination by the Secretary to deny a request for a waiver (or extension of waiver) under this subsection shall be

subject to review to the extent provided under section 1316(b) of this title.

(B) Notwithstanding any other provision of this chapter, if the Secretary denies a request of the State for an extension of a waiver under this subsection, any waiver under this subsection in effect on the date such request is made shall remain in effect for a period of not less than 90 days after the date on which the Secretary denies such request (or, if the State seeks review of such determination in accordance with subparagraph (A), the date on which a final determination is made with respect to such review).

(e) Waiver for children infected with AIDS or drug dependent at birth

(1)(A) Subject to paragraph (2), the Secretary shall grant a waiver to provide that a State plan approved under this subchapter shall include as "medical assistance" under such plan payment for part or all of the cost of nursing care, respite care, physicians' services, prescribed drugs, medical devices and supplies, transportation services, and such other services requested by the State as the Secretary may approve which are provided pursuant to a written plan of care to a child described in subparagraph (B) with respect to whom there has been a determination that but for the provision of such services the infants would be likely to require the level of care provided in a hospital or nursing facility the cost of which could be reimbursed under the State plan.

(B) Children described in this subparagraph are individuals under 5 years of age who −

(i) at the time of birth were infected with (or tested positively for) the etiologic agent for acquired immune deficiency syndrome (AIDS),

(ii) have such syndrome, or

(iii) at the time of birth were dependent on heroin, cocaine, or phencyclidine,

and with respect to whom adoption or foster care assistance is (or will be) made available under part E of subchapter IV of this chapter.

(2) A waiver shall not be granted under this subsection unless the State provides assurances satisfactory to the Secretary that −

(A) necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of individuals provided services under the waiver and to assure financial accountability for funds expended with respect to such services;

(B) under such waiver the average per capita expenditure estimated by the State in any fiscal year for medical assistance provided with respect to such individuals does not exceed 100 percent of the average per capita expenditure that the State reasonably estimates would have been made in that fiscal year for expenditures under the State plan for such individuals if the waiver had not been granted; and

(C) the State will provide to the Secretary annually, consistent with a data collection plan designed by the Secretary, information on the impact of the waiver granted under this

subsection on the type and amount of medical assistance provided under the State plan and on the health and welfare of recipients.

(3) A waiver granted under this subsection may include a waiver of the requirements of section 1396a(a)(1) of this title (relating to statewideness) and section 1396a(a)(10)(B) of this title (relating to comparability). A waiver under this subsection shall be for an initial term of 3 years and, upon the request of a State, shall be extended for additional five−year periods unless the Secretary determines that for the previous waiver period the assurances provided under paragraph (2) have not been met.

(4) The provisions of paragraph (6) of subsection (d) of this section shall apply to this subsection in the same manner as it applies to subsection (d) of this section.

(f) Monitor of implementation of waivers; termination of waiver for noncompliance; time limitation for action on requests for plan approval, amendments, or waivers

(1) The Secretary shall monitor the implementation of waivers granted under this section to assure that the requirements for such waiver are being met and shall, after notice and opportunity for a hearing, terminate any such waiver where he finds noncompliance has occurred.

(2) A request to the Secretary from a State for approval of a proposed State plan or plan amendment or a waiver of a requirement of this subchapter submitted by the State pursuant to a provision of this subchapter shall be deemed granted unless the Secretary, within 90 days after the date of its submission to the Secretary,

either denies such request in writing or informs the State agency in writing with respect to any additional information which is needed in order to make a final determination with respect to the request. After the date the Secretary receives such additional information, the request shall be deemed granted unless the Secretary, within 90 days of such date, denies such request.

(g) Optional targeted case management services

(1) A State may provide, as medical assistance, case management services under the plan without regard to the requirements of section 1396a(a)(1) of this title and section 1396a(a)(10)(B) of this title. The provision of case management services under this subsection shall not restrict the choice of the individual to receive medical assistance in violation of section 1396a(a)(23) of this title. A State may limit the provision of case management services under this subsection to individuals with acquired immune deficiency syndrome (AIDS), or with AIDS−related conditions, or with either, or to individuals described in section 1396a(z)(1)(A) of this title and a State may limit the provision of case management services under this subsection to individuals with chronic mental illness. The State may limit the case managers available with respect to case management services for eligible individuals with developmental disabilities or with chronic mental illness in order to ensure that the case managers for such individuals are capable of ensuring that such individuals receive needed services.

(2) For purposes of this subsection, the term "case management

services" means services which will assist individuals eligible under the plan in gaining access to needed medical, social, educational, and other services.

(h) Period of waivers; continuations

No waiver under this section (other than a waiver under subsection (c), (d), or (e) of this section) may extend over a period of longer than two years unless the State requests continuation of such waiver, and such request shall be deemed granted unless the Secretary, within 90 days after the date of its submission to the Secretary, either denies such request in writing or informs the State agency in writing with respect to any additional information which is needed in order to make a final determination with respect to the request. After the date the Secretary receives such additional information, the request shall be deemed granted unless the Secretary, within 90 days of such date, denies such request.

−SOURCE−

(Aug. 14, 1935, ch. 531, title XIX, Sec. 1915, as added Pub. L. 97−35, title XXI, Sec. 2175(b), Aug. 13, 1981, 95 Stat. 809; amended Pub. L. 97−35, title XXI, Secs. 2176, 2177(a), Aug. 13, 1981, 95 Stat. 812, 813; Pub. L. 97−248, title I, Sec. 137(b)(19)(A), (20)−(25), Sept. 3, 1982, 96 Stat. 380; Pub. L. 97−448, title III, Sec. 309(b)(17), Jan. 12, 1983, 96 Stat. 2409; Pub. L. 98−369, div. B, title III, Sec. 2373(b)(21), July 18, 1984, 98 Stat. 1112; Pub. L. 99−272, title IX, Secs. 9502(a)−(e), (g)−(i), 9508(a), Apr. 7, 1986, 100 Stat. 202−204, 210; Pub. L.

99−509, title IX, Secs. 9320(h)(3), 9411(a)−(d), Oct. 21, 1986, 100 Stat. 2016, 2061, 2062; Pub. L. 100−93, Sec. 8(h)(2), Aug. 18, 1987, 101 Stat. 694; Pub. L. 100−203, title IV, Secs. 4072(d), 4102(a)(1), (b)(2), 4118(a)(1), (b), (i)(1), (k), (l)(1), (p)(10), 4211(h)(10), Dec. 22, 1987, 101 Stat. 1330−117, 1330−143, 1330−146, 1330−154 to 1330−157, 1330−160, 1330−206; Pub. L. 100−360, title II, Sec. 204(d)(3), title IV, Sec. 411(k)(3), (10)(A), (H), (I), (17)(A), (l)(3)(G), July 1, 1988, 102 Stat. 729, 791, 794, 796, 799, 803; Pub. L. 100−485, title VI, Sec. 608(d)(26)(M), (f)(2), Oct. 13, 1988, 102 Stat. 2422, 2424; Pub. L. 100−647, title VIII, Secs. 8432(a), (b), 8437(a), Nov. 10, 1988, 102 Stat. 3804, 3806; Pub. L. 101−234, title II, Sec. 201(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101−239, title VI, Secs. 6115(c), 6411(c)(2), Dec. 19, 1989, 103 Stat. 2219, 2270; Pub. L. 101−508, title IV, Secs. 4604(c), 4704(b)(3), 4741, 4742(a), (c)(1), (d)(1), Nov. 5, 1990, 104 Stat. 1388−169, 1388−172, 1388−197, 1388−198; Pub. L. 102−119, Sec. 26(i)(2), Oct. 7, 1991, 105 Stat. 607; Pub. L. 103−66, title XIII, Sec. 13603(d), Aug. 10, 1993, 107 Stat. 620; Pub. L. 105−33, title IV, Secs. 4106(c), 4743(a), Aug. 5, 1997, 111 Stat. 368, 524; Pub. L. 106−113, div. B, Sec. 1000(a)(6) [title VI, Sec. 608(o), (z)], Nov. 29, 1999, 113 Stat. 1536, 1501A−397, 1501A−398; Pub. L. 106−554, Sec. 1(a)(6) [title VII, Sec. 702(c)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A−574; Pub. L. 107−121, Sec. 2(b)(3), Jan. 15, 2002, 115 Stat. 2384.)

−STATAMEND−

AMENDMENT OF SUBSECTION (B)

Pub. L. 106−113, div. B, Sec. 1000(a)(6) [title VI, Sec. 608(z)], Nov. 29, 1999, 113 Stat. 1536, 1501A−398, provided that, effective Oct. 1, 2004, subsection (b) of this section is amended, in the matter preceding paragraph (1), by striking "sections 1396a(a)(13)(C) and" and inserting "section".

−REFTEXT−

REFERENCES IN TEXT

Parts A and B of subchapter XVIII of this chapter, referred to in subsec. (a)(1)(B)(ii)(II), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Section 1401 of title 20, referred to in subsec. (c)(5)(C)(i), was in the original a reference to section 602 of the Individuals with Disabilities Education Act, Pub. L. 91−230, title VI. Section 602 of Pub. L. 91−230 was omitted in the general amendment of subchapter I of chapter 33 of Title 20, Education, by Pub. L. 105−17, title I, Sec. 101, June 4, 1997, 111 Stat. 37. Pub. L. 105−17 enacted a new section 602 of Pub. L. 91−230, which is classified to section 1401 of Title 20, and which contains provisions defining "special education" and "related services".

Part E of subchapter IV of this chapter, referred to in subsec. (e)(1)(B), is classified to section 670 et seq. of this title.

−MISC1−

AMENDMENTS

2002 − Subsec. (b). Pub. L. 107−121 substituted "1396a(bb)" for "1396a(aa)".

2000 − Subsec. (b). Pub. L. 106−554 substituted "1396a(a)(15),

1396a(aa)," for "1396a(a)(13)(C)" in introductory provisions.

1999 − Subsec. (b). Pub. L. 106−113, Sec. 1000(a)(6) [title VI, Sec. 608(o)(1)], substituted "1396a(a)(13)(C)" for "1396a(a)(13)(E)" in introductory provisions.

Subsec. (d)(5)(B)(iii). Pub. L. 106−113, Sec. 1000(a)(6) [title VI, Sec. 608(o)(2)], which directed substitution of "65" for "75" in last sentence of cl. (iii), was executed by making the substitution in the penultimate sentence to reflect the probable intent of Congress.

Subsec. (h). Pub. L. 106−113, Sec. 1000(a)(6) [title VI, Sec. 608(o)(3)], substituted "90 days of such date" for "90 day of such date".

1997 − Subsec. (a)(1)(B)(ii)(I). Pub. L. 105−33, Sec. 4106(c), substituted "paragraphs (16) and (17)" for "paragraphs (15) and (16)".

Subsec. (c)(5). Pub. L. 105−33, Sec. 4743(a), in introductory provisions, struck out ", with respect to individuals who receive such services after discharge from a nursing facility or intermediate care facility for the mentally retarded" after " 'habilitation services' ".

1993 − Subsec. (g)(1). Pub. L. 103−66 inserted "or to individuals described in section 1396a(z)(1)(A) of this title" after "or with either,".

1991 − Subsec. (c)(5)(C)(i). Pub. L. 102−119 substituted "(as defined in paragraphs (16) and (17) of section 1401(a) of title 20)" for "(as defined in section 1401(16) and (17) of title 20)".

The reference to section 1401 of title 20 includes the substitution of "Individuals with Disabilities Education Act" for "Education of the Handicapped Act" in the original.

1990 − Subsec. (b). Pub. L. 101−508, Sec. 4704(b)(3), inserted "(other than sections 1396a(a)(13)(E) and 1396a(a)(10)(A) of this title insofar as it requires provision of the care and services described in section 1396d(a)(2)(C) of this title)" after "section 1396a of this title" in introductory provisions.

Pub. L. 101−508, Sec. 4604(c), which directed amendment of subsec. (b) by inserting "(other than subsection (s))" after "Section 1396a of this title", was executed by inserting the new language after "section 1396a of this title" to reflect the probable intent of Congress.

Subsec. (b)(4). Pub. L. 101−508, Sec. 4742(a), inserted before period at end "and if providers under such restriction are paid on a timely basis in the same manner as health care practitioners must be paid under section 1396a(a)(37)(A) of this title".

Subsec. (c)(1). Pub. L. 101−508, Sec. 4741(a), inserted at end "For purposes of this subsection, the term 'room and board' shall not include an amount established under a method determined by the State to reflect the portion of costs of rent and food attributable to an unrelated personal caregiver who is residing in the same household with an individual who, but for the assistance of such caregiver, would require admission to a hospital, nursing facility, or intermediate care facility for the mentally retarded."

Subsec. (c)(4). Pub. L. 101−508, Sec. 4742(d)(1), inserted at end

"Except as provided under paragraph (2)(D), the Secretary may not restrict the number of hours or days of respite care in any period which a State may provide under a waiver under this subsection."

Subsec. (c)(7)(C). Pub. L. 101−508, Sec. 4742(c)(1), added subpar. (C).

Subsec. (d)(1). Pub. L. 101−508, Sec. 4741(a), inserted at end "For purposes of this subsection, the term 'room and board' shall not include an amount established under a method determined by the State to reflect the portion of costs of rent and food attributable to an unrelated personal caregiver who is residing in the same household with an individual who, but for the assistance of such caregiver, would require admission to a hospital, nursing facility, or intermediate care facility for the mentally retarded."

Subsec. (d)(5)(B)(iv). Pub. L. 101−508, Sec. 4741(b), substituted "this subchapter whose provisions become effective on or after such date" for first reference to "this subchapter".

1989 − Subsec. (a)(1)(B)(ii)(I). Pub. L. 101−239, Sec. 6115(c), substituted "paragraphs (15) and (16)" for "paragraphs (14) and (15)".

Pub. L. 101−234 repealed Pub. L. 100−360, Sec. 204(d)(3), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (b)(4). Pub. L. 101−239, Sec. 6411(c)(2), inserted "shall be consistent with the requirements of section 1396r−4 of this title and" after "which standards".

1988 − Subsec. (a)(1)(B)(ii)(I). Pub. L. 100−360, Sec. 204(d)(3), substituted "paragraphs (14) and (15)" for "paragraphs (13) and (14)".

Subsec. (a)(2). Pub. L. 100−485, Sec. 608(f)(2), substituted "restricts" for "Restricts" in introductory provisions.

Subsec. (c)(7). Pub. L. 100−360, Sec. 411(l)(3)(G), amended Pub. L. 100−203, Sec. 4211(h)(10)(G), see 1987 Amendment note below.

Subsec. (c)(7)(A). Pub. L. 100−647, Sec. 8437(a), substituted "who are inpatients in, or who would require the level of care provided in, hospitals," for "who are inpatients in hospitals," and "who are inpatients in, or who would require the level of care provided in, those respective facilities" for "who are inpatients of those respective facilities".

Subsec. (c)(7)(B). Pub. L. 100−360, Sec. 411(k)(10)(H), inserted ", without regard to the availability of beds for such inpatients" before period at end.

Subsec. (c)(10). Pub. L. 100−360, Sec. 411(k)(10)(A), substituted "The Secretary shall not limit to fewer than 200" for "No waiver under this subsection shall limit by an amount less than 200" and "under a waiver under this subsection" for "under such waiver".

Subsec. (d)(5)(B)(i), (ii). Pub. L. 100−647, Sec. 8432(b), in introductory provisions, substituted "the number of years (rounded to the nearest quarter of a year) beginning after the base year and ending at the end of the waiver year" for "the number of years beginning after the base year and ending before the waiver year", in subcls. (I) and (II), substituted "between the beginning of the

base year and the beginning of the waiver year" for "between the base year and the waiver year", and in subcl. (III), inserted "(rounded to the nearest quarter of a year)" after "for each year" and substituted "at the end of the waiver year" for "before the waiver year".

Subsec. (d)(5)(B)(iii). Pub. L. 100−360, Sec. 411(k)(3)(A)(ii), inserted before last sentence "The Secretary shall develop (by not later than October 1, 1989) a method for projecting, on a State−specific basis, the percentage increase in the number of residents in each State who are over 75 years of age for any period."

Subsec. (d)(5)(B)(iii)(III). Pub. L. 100−360, Sec. 411(k)(3)(A)(i), substituted "65" for "75".

Subsec. (d)(5)(B)(iv). Pub. L. 100−647, Sec. 8432(a), added cl. (iv).

Subsec. (d)(5)(C)(i). Pub. L. 100−360, Sec. 411(k)(3)(B), substituted "paragraph (4), and personal care services" for "paragraph (4)(B), personal care services, and services furnished pursuant to a waiver under subsection (c) of this section".

Subsec. (e). Pub. L. 100−360, Sec. 411(k)(17)(A)(ii), (iii), added subsec. (e), redesignated former subsec. (e)(1) as (f)(1), and struck out former subsec. (e)(2) which read as follows: "The Secretary shall report, not later than September 30, 1984, to Congress on waivers granted under this section."

Subsec. (f)(1). Pub. L. 100−360, Sec. 411(k)(17)(A)(ii), redesignated former subsec. (e)(1) as (f)(1).

Subsec. (f)(2). Pub. L. 100−360, Sec. 411(k)(17)(A)(i), redesignated former subsec. (f) as subsec. (f)(2).

Subsec. (h). Pub. L. 100−360, Sec. 411(k)(10)(I), made technical amendment to directory language of Pub. L. 100−203, Sec. 4118(l)(1), see 1987 Amendment note below.

Pub. L. 100−360, Sec. 411(k)(17)(A)(iv), as amended by Pub. L. 100−485, Sec. 608(d)(26)(M), substituted ", (d), or (e)" for "or (d)".

1987 − Subsec. (a)(1)(B)(ii)(I). Pub. L. 100−203, Sec. 4072(d), substituted "paragraphs (13) and (14)" for "paragraphs (12) and (13)".

Subsec. (a)(2). Pub. L. 100−93 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "restricts −

"(A) for a reasonable period of time the provider or providers from which an individual (eligible for medical assistance for items or services under the State plan) can receive such items or services, if the State has found, after notice and opportunity for a hearing (in accordance with procedures established by the State), that the individual has utilized such items or services at a frequency or amount not medically necessary (as determined in accordance with utilization guidelines established by the State), or

"(B) (through suspension or otherwise) for a reasonable period of time the participation of a provider of items or services under the State plan, if the State has found, after notice and opportunity for a hearing (in accordance with procedures

established by the State), that the provider has (in a significant number or proportion of cases) provided such items or services either (i) at a frequency or amount not medically necessary (as determined in accordance with utilization guidelines established by the State), or (ii) of a quality which does not meet professionally recognized standards of health care, if, under such restriction, individuals eligible for medical assistance for such services have reasonable access (taking into account geographic location and reasonable travel time) to such services of adequate quality."

Subsec. (c)(1). Pub. L. 100−203, Sec. 4211(h)(10)(A), substituted "nursing facility or intermediate care facility for the mentally retarded" for "skilled nursing facility or intermediate care facility".

Subsec. (c)(2)(B). Pub. L. 100−203, Sec. 4211(h)(10)(C), in closing provisions, substituted "need for inpatient hospital services, nursing facility services, or services in an intermediate care facility for the mentally retarded" for "need for such inpatient hospital, skilled nursing facility or intermediate care facility services".

Pub. L. 100−203, Sec. 4118(p)(10), in closing provisions inserted "such" after "need for".

Subsec. (c)(2)(B)(i). Pub. L. 100−203, Sec. 4211(h)(10)(B), substituted "services, nursing facility services, or services in an intermediate care facility for the mentally retarded" for ", skilled nursing facility, or intermediate care facility services".

Subsec. (c)(2)(C). Pub. L. 100−203, Sec. 4211(h)(10)(D), (E), substituted ", nursing facility, or intermediate care facility for the mentally retarded" for "or skilled nursing facility or intermediate care facility" and ", nursing facility services, or services in an intermediate care facility for the mentally retarded" for "or skilled nursing facility or intermediate care facility services".

Subsec. (c)(3). Pub. L. 100−203, Sec. 4118(a)(1), substituted ", section 1396a(a)(10)(B) of this title (relating to comparability), and section 1396a(a)(10)(C)(i)(III) of this title (relating to income and resource rules applicable in the community)" for "and section 1396a(a)(10)(B) of this title (relating to comparability)".

Subsec. (c)(5). Pub. L. 100−203, Sec. 4211(h)(10)(F), substituted "nursing facility or intermediate care facility for the mentally retarded" for "skilled nursing facility or intermediate care facility".

Subsec. (c)(7). Pub. L. 100−203, Sec. 4211(h)(10)(G), as amended by Pub. L. 100−360, Sec. 411(l)(3)(G), substituted ", nursing facilities, or intermediate care facilities for the mentally retarded" for "or in skilled nursing or intermediate care facilities" in subpar. (A) and "nursing facility" for "skilled nursing facility or intermediate care facility" in subpar. (B).

Pub. L. 100−203, Sec. 4118(k), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(10). Pub. L. 100−203, Sec. 4118(b), added par. (10).

Subsec. (d). Pub. L. 100−203, Sec. 4102(a)(1), added subsec. (d).

Former subsec. (d) redesignated (h).

Subsec. (g)(1). Pub. L. 100−203, Sec. 4118(i)(1), inserted at end "The State may limit the case managers available with respect to case management services for eligible individuals with developmental disabilities or with chronic mental illness in order to ensure that the case managers for such individuals are capable of ensuring that such individuals receive needed services."

Subsec. (h). Pub. L. 100−203, Sec. 4118(l)(1), as amended by Pub. L. 100−360, Sec. 411(k)(10)(I), substituted ", within 90 days after the date of its submission to the Secretary, either denies such request in writing or informs the State agency in writing with respect to any additional information which is needed in order to make a final determination with respect to the request. After the date the Secretary receives such additional information, the request shall be deemed granted unless the Secretary, within 90 day of such date, denies such request." for "denies such request in writing within 90 days after the date of its submission to the Secretary."

Pub. L. 100−203, Sec. 4102(b)(2), substituted "subsection (c) or (d) of this section" for "subsection (c) of this section".

Pub. L. 100−203, Sec. 4102(a)(1)(A), redesignated former subsec. (d) as (h).

1986 − Subsec. (a)(1)(B)(ii)(I). Pub. L. 99−509, Sec. 9320(h)(3), substituted "paragraphs (12) and (13)" for "paragraphs (11) and (12)".

Subsec. (b). Pub. L. 99−272, Sec. 9508(a)(2), inserted provision,

following par. (4), that no waiver under this subsection may restrict the choice of the individual in receiving services under section 1396d(a)(4)(C) of this title.

Subsec. (c)(1). Pub. L. 99−509, Sec. 9411(a)(1), inserted "a hospital or" after "level of care provided in", and struck out provision added by Pub. L. 99−272, Sec. 9502(b)(1).

Pub. L. 99−272, Sec. 9502(b)(1), inserted provision relating to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would continue to receive inpatient hospital services, skilled nursing facility services, or intermediate care facility services because they are dependent on ventilator support the cost of which is reimbursed under the State plan.

Subsec. (c)(2)(B). Pub. L. 99−509, Sec. 9411(a)(2), substituted "inpatient hospital, skilled nursing facility, or" for "skilled nursing facility or" in cl. (i) and inserted "inpatient hospital," after "need for" in concluding provision following cl. (iii).

Subsec. (c)(2)(C). Pub. L. 99−272, Sec. 9502(b)(2), inserted "hospital or" after "provided in a", and "inpatient hospital services or" after "the provision of".

Subsec. (c)(2)(D). Pub. L. 99−272, Sec. 9502(c)(1), inserted "100 percent of" after "does not exceed".

Subsec. (c)(3). Pub. L. 99−509, Sec. 9411(c), substituted "and section 1396a(a)(10)(B) of this title (relating to comparability)" for "and section 1396a(a)(10) of this title".

Pub. L. 99−272, Sec. 9502(g), substituted "additional five−year

periods" for "additional three−year periods", and "previous waiver period" for "previous three−year period".

Pub. L. 99−272, Sec. 9502(e), inserted at end "A waiver may provide, with respect to post−eligibility treatment of income of all individuals receiving services under that waiver, that the maximum amount of the individual's income which may be disregarded for any month for the maintenance needs of the individual may be an amount greater than the maximum allowed for that purpose under regulations in effect on July 1, 1985."

Subsec. (c)(4)(B). Pub. L. 99−509, Sec. 9411(d), inserted before the period "and for day treatment or other partial hospitalization services, psychosocial rehabilitation services, and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness".

Subsec. (c)(5). Pub. L. 99−272, Sec. 9502(a), added par. (5).

Subsec. (c)(6). Pub. L. 99−272, Sec. 9502(c)(2), added par. (6).

Subsec. (c)(7). Pub. L. 99−509, Sec. 9411(a)(3), amended par. (7) generally. Prior to amendment, par. (7) read as follows: "In making estimates under paragraph (2)(D) in the case of a waiver which applies only to physically disabled individuals who are inpatients in skilled nursing or intermediate care facilities, the State may determine the average per capita expenditure which would have been made in a fiscal year for those individuals under the State plan separately from the expenditure for other individuals who are inpatients of those facilities."

Pub. L. 99−272, Sec. 9502(d), added par. (7).

Subsec. (c)(8). Pub. L. 99−272, Sec. 9502(h), added par. (8).

Subsec. (c)(9). Pub. L. 99−272, Sec. 9502(i), added par. (9).

Subsec. (g). Pub. L. 99−272, Sec. 9508(a)(1), added subsec. (g).

Subsec. (g)(1). Pub. L. 99−509, Sec. 9411(b), inserted provision at end allowing a State to limit case management services to AIDS victims or to individuals with chronic mental illness.

1984 − Subsec. (c)(1). Pub. L. 98−369 substituted "under this subchapter" for "under this part".

1983 − Subsec. (c)(2)(B). Pub. L. 97−448 substituted "need for such skilled nursing facility or intermediate care facility services" for "need for such services" in provisions following cl. (iii).

1982 − Subsec. (b). Pub. L. 97−248, Sec. 137(b)(19)(A), struck out "and section 1396b(m) of this title" after "section 1396a of this title".

Subsec. (b)(1). Pub. L. 97−248, Sec. 137(b)(20), inserted "primary care" before "case−management system", and substituted "medical care services" for "primary care services".

Subsec. (c)(1). Pub. L. 97−248, Sec. 137(b)(21), inserted "payment for part or all of the cost of" after "may include as 'medical assistance' under such plan".

Subsec. (c)(2)(B). Pub. L. 97−248, Sec. 137(b)(22), redesignated existing provisions as cls. (i) and (ii) and added cl. (iii).

Subsec. (c)(3). Pub. L. 97−248, Sec. 137(b)(23), substituted "section 1396a(a)(1) of this title" for "subsection (a)(1) of this section" and "section 1396a(a)(10) of this title" for "subsection

(a)(10) of section 1396a of this title".

Subsec. (c)(4). Pub. L. 97−248, Sec. 137(b)(24), substituted "this subsection" for "this section".

Subsec. (f). Pub. L. 97−248, Sec. 137(b)(25), inserted "approval of" before "a proposed State plan".

1981 − Subsecs. (c) to (e). Pub. L. 97−35, Sec. 2176, added subsec. (c), redesignated former subsec. (c) as (d) and inserted "(other than a waiver under subsection (c) of this section)", and redesignated former subsec. (d) as (e).

Subsec. (f). Pub. L. 97−35, Sec. 2177(a), added subsec. (f).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107−121 effective as if included in the enactment of section 702 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 as enacted into law by section 1(a)(6) of Pub. L. 106−554, see section 2(c)(2) of Pub. L. 107−121, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106−554 effective Jan. 1, 2001, and applicable to services furnished on or after such date, see section 1(a)(6) [title VII, Sec. 702(e)] of Pub. L. 106−554, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106−113, div. B, Sec. 1000(a)(6) [title VI, Sec. 608(z)], Nov. 29, 1999, 113 Stat. 1536, 1501A−398, provided that the amendment made by section 1000(a)(6) [title VI, Sec. 608(z)] is effective Oct. 1, 2004.

Amendment by section 1000(a)(6) [title VI, Sec. 608o] of Pub. L. 106−113 effective Nov. 29, 1999, see section 1000(a)(6) [title VI, Sec. 608(bb)] of Pub. L. 106−113, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4106(c) of Pub. L. 105−33 applicable to bone mass measurements performed on or after July 1, 1998, see section 4106(d) of Pub. L. 105−33, set out as a note under section 1395x of this title.

Section 4743(b) of Pub. L. 105−33 provided that: "The amendment made by subsection (a) [amending this section] apply to services furnished on or after October 1, 1997."

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103−66 applicable to medical assistance furnished on or after Jan. 1, 1994, without regard to whether or not final regulations to carry out the amendments by section 13603 of Pub. L. 103−66 have been promulgated by such date, see section 13603(f) of Pub. L. 103−66, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by section 4604(c) of Pub. L. 101−508 effective with respect to payments under this subchapter for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4604 of Pub. L. 101−508 have been promulgated by such date, see section 4604(d) of Pub. L. 101−508, set out as a note under section 1396a

of this title.

Amendment by section 4704(b)(3) of Pub. L. 101−508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101−239, see section 4704(f) of Pub. L. 101−508, set out as a note under section 1396a of this title.

Section 4742(b) of Pub. L. 101−508 provided that: "The amendment made by subsection (a) [amending this section] shall take effect as of the first calendar quarter beginning more than 30 days after the date of the enactment of this Act [Nov. 5, 1990]."

Section 4742(c)(2) of Pub. L. 101−508 provided that: "The amendment made by paragraph (1) [amending this section] shall apply as if included in the enactment of the Omnibus Budget Reconciliation Act of 1981 [Pub. L. 97−35], but shall only apply to facilities the participation of which under a State plan under title XIX of the Social Security Act [this subchapter] is terminated on or after the date of the enactment of this Act [Nov. 5, 1990]."

Section 4742(d)(2) of Pub. L. 101−508 provided that: "The amendment made by paragraph (1) [amending this section] shall apply as if included in the enactment of the Omnibus Budget Reconciliation Act of 1981 [Pub. L. 97−35]."

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 6115(c) of Pub. L. 101−239 applicable to screening pap smears performed on or after July 1, 1990, see section 6115(d) of Pub. L. 101−239, set out as a note under section 1395x of this title.

Section 6411(c)(4) of Pub. L. 101−239 provided that: "The amendment made by paragraph (2) [amending this section] shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100−203]."

Amendment by Pub. L. 101−234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101−234, set out as a note under section 1320a−7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 8432(c) of Pub. L. 100−647 provided that: "The amendments made by this section [amending this section] shall apply to waiver years beginning during or after fiscal year 1989."

Section 8437(b) of Pub. L. 100−647 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to waiver applications submitted before, on, or after the date of the enactment of this Act [Nov. 10, 1988]."

Amendment by section 608(d)(26)(M) of Pub. L. 100−485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100−360, see section 608(g)(1) of Pub. L. 100−485, set out as a note under section 704 of this title.

Amendment by section 608(f)(2) of Pub. L. 100−485 effective Oct. 13, 1988, see section 608(g)(2) of Pub. L. 100−485, set out as a note under section 704 of this title.

Amendment by section 204(d)(3) of Pub. L. 100−360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100−360, set out as a note under section 1395m of this title.

Except as specifically provided in section 411 of Pub. L. 100−360, amendment by section 411(k)(3), (10)(A), (H), (I), (17)(A), (l)(3)(G) of Pub. L. 100−360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100−203, effective as if included in the enactment of that provision in Pub. L. 100−203, see section 411(a) of Pub. L. 100−360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENTS

For effective date of amendment by section 4072(d) of Pub. L. 100−203, see section 4072(e) of Pub. L. 100−203, set out as a note under section 1395x of this title.

Section 4102(a)(2) of Pub. L. 100−203 provided that: "The amendments made by paragraph (1) [amending this section] shall become effective on January 1, 1988."

Section 4118(a)(2) of Pub. L. 100−203 provided that: "The amendment made by paragraph (1) [amending this section] shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99−509]."

Section 4118(i)(2) of Pub. L. 100−203 provided that: "The amendment made by paragraph (1) [amending this section] shall take effect as though it were included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99−272]."

Section 4118(l)(2) of Pub. L. 100−203 provided that: "The amendment made by paragraph (1) [amending this section] shall apply

to requests for continuation of waivers received after the date of the enactment of this Act [Dec. 22, 1987]."

Section 4118(p)(10) of Pub. L. 100−203 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 99−509.

Amendment by section 4211(h)(10) of Pub. L. 100−203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100−203, as amended, set out as an Effective Date note under section 1396r of this title.

Amendment by Pub. L. 100−93 effective at end of fourteen−day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100−93, set out as a note under section 1320a−7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 9320(h)(3) of Pub. L. 99−509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99−509, as amended, set out as notes under section 1395k of this title.

Section 9411(e) of Pub. L. 99−509 provided that: "The amendments made by this section [amending this section] shall apply to

applications for waivers (or renewals thereof) approved on or after the date of the enactment of this Act [Oct. 21, 1986]."

Section 9502(j) of Pub. L. 99−272, as amended by Pub. L. 99−509, title IX, Sec. 9435(a), Oct. 21, 1986, 100 Stat. 2069; Pub. L. 100−203, title IV, Sec. 4118(j), Dec. 22, 1987, 101 Stat. 1330−156, provided that:

"(1) Habilitation services. − The amendment made by subsection (a) [amending this section] shall be effective for services furnished on or after the date of the enactment of this Act [Apr. 7, 1986] to individuals eligible for services under a waiver granted under section 1915(c) of the Social Security Act [subsec. (c) of this section], without regard to whether such individuals were receiving institutional services before their participation in the waiver.

"(2) Hospitalized patients. − The amendments made by subsection (b) [amending this section] shall be effective for services furnished on or after October 1, 1985.

"(3) Prohibition of regulatory limits and treatment of certain physically disabled individuals. − The amendments made by subsections (c) and (d) [amending this section] shall apply to applications for waivers (or renewals thereof) filed before, on, or after, the date of the enactment of this Act [Apr. 7, 1986] and for services furnished on or after August 13, 1981.

"(4) Income standards. − The amendment made by subsection (e) [amending this section] shall apply to waivers (or renewals thereof) approved before, on, or after the date of the enactment of

this Act [Apr. 7, 1986].

"(5) Waiver extensions. − Subsection (f) [enacting provisions set out below] shall apply to waivers expiring on or after September 30, 1985, and before September 30, 1986.

"(6) Waiver renewals. − The amendments made by subsection (g) [amending this section] shall become effective on September 30, 1986.

"(7) Coordinated services and substitution of participants. − The amendments made by subsections (h) and (i) [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986]."

Section 9508(b) of Pub. L. 99−272, as amended by Pub. L. 99−509, title IX, Sec. 9435(d)(1), Oct. 21, 1986, 100 Stat. 2070, provided that: "The amendments made by this section [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [Apr. 7, 1986], without regard to whether or not regulations to carry out the amendments have been promulgated by that date."

[Section 4118(j) of Pub. L. 100−203 provided that the amendment made by that section to section 9502(j)(1) of Pub. L. 99−272, set out above, is effective as if included in the enactment of section 9502 of Pub. L. 99−272.]

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97−448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97−248, see

section 309(c)(2) of Pub. L. 97−448, set out as a note under section 426−1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 137(b)(19)(B) of Pub. L. 97−248 provided that: "The amendment made by subparagraph (A) [amending this section] shall not apply with respect to any waiver if such waiver was granted, and the arrangement covered by the waiver was in place, prior to August 10, 1982."

Amendment by section 137(b)(20)−(25) of Pub. L. 97−248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97−35, see section 137(d)(2) of Pub. L. 97−248, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2177(b) of Pub. L. 97−35 provided that: "The amendment made by this section [amending this section] shall become effective 90 days after the date of the enactment of this Act [Aug. 13, 1981]".

PERMITTING ADJUSTMENT IN ESTIMATES TO TAKE INTO ACCOUNT PREADMISSION SCREENING REQUIREMENT

Section 4742(e) of Pub. L. 101−508 provided that: "In the case of a waiver under section 1915(c) of the Social Security Act [subsec. (c) of this section] for individuals with mental retardation or a related condition in a State, the Secretary of Health and Human Services shall permit the State to adjust the estimate of average per capita expenditures submitted under paragraph (2)(D) of such

section, with respect to such expenditures made on or after January 1, 1989, to take into account increases in expenditures for, or utilization of, intermediate care facilities for the mentally retarded resulting from implementation of section 1919(e)(7)(A) of such Act [section 1396r(e)(7)(A) of this title]."

EXTENSIONS OF WAIVERS UNDER SUBSECTION (C)

Section 4102(c) of Pub. L. 100−203 provided that: "In the case of a State which, as of December 1, 1987, has a waiver approved with respect to elderly individuals under section 1915(c) of the Social Security Act [subsec. (c) of this section], which waiver is scheduled to expire before July 1, 1988, if the State notifies the Secretary of Health and Human Services of the State's intention to file an application for a waiver under section 1915(d) of such Act (as amended by subsection (a) of this section), the Secretary shall extend approval of the State's waiver, under section 1915(c) of such Act, on the same terms and conditions through September 30, 1988."

Section 9502(f) of Pub. L. 99−272 provided that: "The Secretary of Health and Human Services shall extend, upon request of the State, any waiver under section 1915(c) of the Social Security Act [subsec. (c) of this section] which expires on or after September 30, 1985, and before September 30, 1986. Such extension shall be for a period of not less than one year nor more than five years, subject to section 1915(e)(1) of such Act."

−SECREF−

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320a−7, 1382c, 1396a,

1396b, 1396d, 1396p, 1396r−4, 1396s, 1396t, 1396u−2, 1396u−4, 1786,

15024, 15025, 15043 of this title.

−FOOTNOTE−

(!1) See References in Text note below.

−End−

−CITE−

42 USC Sec. 1396o 01/06/03

−EXPCITE−

TITLE 42 − THE PUBLIC HEALTH AND WELFARE

CHAPTER 7 − SOCIAL SECURITY

SUBCHAPTER XIX − GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

−HEAD−

Sec. 1396o. Use of enrollment fees, premiums, deductions, cost

sharing, and similar charges

−STATUTE−

(a) Imposition of certain charges under plan in case of individuals

described in section 1396a(a)(10)(A) or (E)

Subject to subsection (g) of this section, the State plan shall

provide that in the case of individuals described in subparagraph

(A) or (E)(i) of section 1396a(a)(10) of this title who are

eligible under the plan −

(1) no enrollment fee, premium, or similar charge will be

imposed under the plan (except for a premium imposed under

subsection (c) of this section);

(2) no deduction, cost sharing or similar charge will be

imposed under the plan with respect to −

(A) services furnished to individuals under 18 years of age (and, at the option of the State, individuals under 21, 20, or 19 years of age, or any reasonable category of individuals 18 years of age or over),

(B) services furnished to pregnant women, if such services relate to the pregnancy or to any other medical condition which may complicate the pregnancy (or, at the option of the State, any services furnished to pregnant women),

(C) services furnished to any individual who is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of his income required for personal needs,

(D) emergency services (as defined by the Secretary), family planning services and supplies described in section 1396d(a)(4)(C) of this title, or

(E) services furnished to an individual who is receiving hospice care (as defined in section 1396d(o) of this title); and

(3) any deduction, cost sharing, or similar charge imposed under the plan with respect to other such individuals or other care and services will be nominal in amount (as determined by the Secretary in regulations which shall, if the definition of

"nominal" under the regulations in effect on July 1, 1982 is changed, take into account the level of cash assistance provided in such State and such other criteria as the Secretary determines to be appropriate); except that a deduction, cost−sharing, or similar charge of up to twice the nominal amount established for outpatient services may be imposed by a State under a waiver granted by the Secretary for services received at a hospital emergency room if the services are not emergency services (referred to in paragraph (2)(D)) and the State has established to the satisfaction of the Secretary that individuals eligible for services under the plan have actually available and accessible to them alternative sources of nonemergency, outpatient services.

(b) Imposition of certain charges under plan in case of individuals other than those described in section 1396a(a)(10)(A) or (E)

The State plan shall provide that in the case of individuals other than those described in subparagraph (A) or (E) of section 1396a(a)(10) of this title who are eligible under the plan −

(1) there may be imposed an enrollment fee, premium, or similar charge, which (as determined in accordance with standards prescribed by the Secretary) is related to the individual's income,

(2) no deduction, cost sharing, or similar charge will be imposed under the plan with respect to −

(A) services furnished to individuals under 18 years of age (and, at the option of the State, individuals under 21, 20, or

19 years of age, or any reasonable category of individuals 18 years of age or over),

(B) services furnished to pregnant women, if such services relate to the pregnancy or to any other medical condition which may complicate the pregnancy (or, at the option of the State, any services furnished to pregnant women),

(C) services furnished to any individual who is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of his income required for personal needs,

(D) emergency services (as defined by the Secretary), family planning services and supplies described in section 1396d(a)(4)(C) of this title, or

(E) services furnished to an individual who is receiving hospice care (as defined in section 1396d(o) of this title); and

(3) any deduction, cost sharing, or similar charge imposed under the plan with respect to other such individuals or other care and services will be nominal in amount (as determined by the Secretary in regulations which shall, if the definition of "nominal" under the regulations in effect on July 1, 1982 is changed, take into account the level of cash assistance provided in such State and such other criteria as the Secretary determines

to be appropriate); except that a deduction, cost−sharing, or similar charge of up to twice the nominal amount established for outpatient services may be imposed by a State under a waiver granted by the Secretary for services received at a hospital emergency room if the services are not emergency services (referred to in paragraph (2)(D)) and the State has established to the satisfaction of the Secretary that individuals eligible for services under the plan have actually available and accessible to them alternative sources of nonemergency, outpatient services.

(c) Imposition of monthly premium; persons affected; amount; prepayment; failure to pay; use of funds from other programs

(1) The State plan of a State may at the option of the State provide for imposing a monthly premium (in an amount that does not exceed the limit established under paragraph (2)) with respect to an individual described in subparagraph (A) or (B) of section 1396a(l)(1) of this title who is receiving medical assistance on the basis of section 1396a(a)(10)(A)(ii)(IX) of this title and whose family income (as determined in accordance with the methodology specified in section 1396a(l)(3) of this title) equals or exceeds 150 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved.

(2) In no case may the amount of any premium imposed under paragraph (1) exceed 10 percent of the amount by which the family

income (less expenses for the care of a dependent child) of an individual exceeds 150 percent of the line described in paragraph (1).

(3) A State shall not require prepayment of a premium imposed pursuant to paragraph (1) and shall not terminate eligibility of an individual for medical assistance under this subchapter on the basis of failure to pay any such premium until such failure continues for a period of not less than 60 days. The State may waive payment of any such premium in any case where the State determines that requiring such payment would create an undue hardship.

(4) A State may permit State or local funds available under other programs to be used for payment of a premium imposed under paragraph (1). Payment of a premium with such funds shall not be counted as income to the individual with respect to whom such payment is made.

(d) Premiums for qualified disabled and working individuals described in section 1396d(s)

With respect to a qualified disabled and working individual described in section 1396d(s) of this title whose income (as determined under paragraph (3) of that section) exceeds 150 percent of the official poverty line referred to in that paragraph, the State plan of a State may provide for the charging of a premium (expressed as a percentage of the medicare cost−sharing described in section 1396d(p)(3)(A)(i) of this title provided with respect to the individual) according to a sliding scale under which such

percentage increases from 0 percent to 100 percent, in reasonable increments (as determined by the Secretary), as the individual's income increases from 150 percent of such poverty line to 200 percent of such poverty line.

(e) Prohibition of denial of services on basis of individual's inability to pay certain charges

The State plan shall require that no provider participating under the State plan may deny care or services to an individual eligible for such care or services under the plan on account of such individual's inability to pay a deduction, cost sharing, or similar charge. The requirements of this subsection shall not extinguish the liability of the individual to whom the care or services were furnished for payment of the deduction, cost sharing, or similar charge.

(f) Charges imposed under waiver authority of Secretary

No deduction, cost sharing, or similar charge may be imposed under any waiver authority of the Secretary, except as provided in subsections (a)(3) and (b)(3) of this section, unless such waiver is for a demonstration project which the Secretary finds after public notice and opportunity for comment −

(1) will test a unique and previously untested use of copayments,

(2) is limited to a period of not more than two years,

(3) will provide benefits to recipients of medical assistance which can reasonably be expected to be equivalent to the risks to the recipients,

(4) is based on a reasonable hypothesis which the demonstration is designed to test in a methodologically sound manner, including the use of control groups of similar recipients of medical assistance in the area, and

(5) is voluntary, or makes provision for assumption of liability for preventable damage to the health of recipients of medical assistance resulting from involuntary participation.

(g) Individuals provided medical assistance under section 1396a(a)(10)(A)(ii)(XV) or (XVI)

With respect to individuals provided medical assistance only under subclause (XV) or (XVI) of section 1396a(a)(10)(A)(ii) of this title −

(1) a State may (in a uniform manner for individuals described in either such subclause) −

(A) require such individuals to pay premiums or other cost−sharing charges set on a sliding scale based on income that the State may determine; and

(B) require payment of 100 percent of such premiums for such year in the case of such an individual who has income for a year that exceeds 250 percent of the income official poverty line (referred to in subsection (c)(1) of this section) applicable to a family of the size involved, except that in the case of such an individual who has income for a year that does not exceed 450 percent of such poverty line, such requirement may only apply to the extent such premiums do not exceed 7.5 percent of such income; and

(2) such State shall require payment of 100 percent of such premiums for a year by such an individual whose adjusted gross income (as defined in section 62 of the Internal Revenue Code of 1986) for such year exceeds $75,000, except that a State may choose to subsidize such premiums by using State funds which may not be federally matched under this subchapter.

In the case of any calendar year beginning after 2000, the dollar amount specified in paragraph (2) shall be increased in accordance with the provisions of section 415(i)(2)(A)(ii) of this title.

−SOURCE−

(Aug. 14, 1935, ch. 531, title XIX, Sec. 1916, as added Pub. L. 97−248, title I, Sec. 131(b), Sept. 3, 1982, 96 Stat. 367; amended Pub. L. 97−448, title III, Sec. 309(b)(18)−(20), Jan. 12, 1983, 96 Stat. 2409, 2410; Pub. L. 99−272, title IX, Sec. 9505(c)(2), Apr. 7, 1986, 100 Stat. 209; Pub. L. 99−509, title IX, Sec. 9403(g)(4)(B), Oct. 21, 1986, 100 Stat. 2056; Pub. L. 100−203, title IV, Secs. 4101(d)(1), 4211(h)(11), Dec. 22, 1987, 101 Stat. 1330−142, 1330−207; Pub. L. 100−360, title IV, Sec. 411(k)(2), July 1, 1988, 102 Stat. 791; Pub. L. 101−239, title VI, Sec. 6408(d)(3), Dec. 19, 1989, 103 Stat. 2269; Pub. L. 105−33, title IV, Sec. 4708(b), Aug. 5, 1997, 111 Stat. 506; Pub. L. 106−170, title II, Sec. 201(a)(3), Dec. 17, 1999, 113 Stat. 1893.)

−REFTEXT−

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (g)(2), is classified generally to Title 26, Internal Revenue Code.

−MISC1−

AMENDMENTS

1999 − Subsec. (a). Pub. L. 106−170, Sec. 201(a)(3)(A), substituted "Subject to subsection (g) of this section, the State plan" for "The State plan" in introductory provisions.

Subsec. (g). Pub. L. 106−170, Sec. 201(a)(3)(B), added subsec. (g).

1997 − Subsec. (a)(2)(D). Pub. L. 105−33, Sec. 4708(b)(1), struck out "or services furnished to such an individual by a health maintenance organization (as defined in section 1396b(m) of this title) in which he is enrolled," after "section 1396d(a)(4)(C) of this title,".

Subsec. (b)(2)(D). Pub. L. 105−33, Sec. 4708(b)(2), struck out "or (at the option of the State) services furnished to such an individual by a health maintenance organization (as defined in section 1396b(m) of this title) in which he is enrolled," after "section 1396d(a)(4)(C) of this title,".

1989 − Subsec. (a). Pub. L. 101−239, Sec. 6408(d)(3)(A), substituted "subparagraph (A) or (E)(i)" for "subparagraph (A) or (E)" in introductory provisions.

Subsecs. (d) to (f). Pub. L. 101−239, Sec. 6408(d)(3)(B), (C), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

1988 − Subsec. (c)(1). Pub. L. 100−360 struck out "nonfarm" after "150 percent of the".

1987 − Subsec. (a)(1). Pub. L. 100−203, Sec. 4101(d)(1)(A),

inserted "(except for a premium imposed under subsection (c) of this section)" after "plan".

Subsecs. (a)(2)(C), (b)(2)(C). Pub. L. 100−203, Sec. 4211(h)(11), substituted "nursing facility, intermediate care facility for the mentally retarded" for "skilled nursing facility, intermediate care facility".

Subsecs. (c) to (e). Pub. L. 100−203, Sec. 4101(d)(1)(B), (C), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1986 − Subsec. (a). Pub. L. 99−509 substituted "subparagraph (A) or (E) of section 1396a(a)(10) of this title" for "section 1396a(a)(10)(A) of this title".

Subsec. (a)(2)(E). Pub. L. 99−272 added subpar. (E).

Subsec. (b). Pub. L. 99−509 substituted "subparagraph (A) or (E) of section 1396a(a)(10) of this title" for "section 1396a(a)(10)(A) of this title".

Subsec. (b)(2)(E). Pub. L. 99−272 added subpar. (E).

1983 − Subsec. (c). Pub. L. 97−448, Sec. 309(b)(18), substituted "subsection" for "subparagraph".

Subsec. (d). Pub. L. 97−448, Sec. 309(b)(19), (20), substituted in introductory text ", except as provided in subsections (a)(3) and (b)(3) of this section" for "unless authorized under this section", and in cl. (5) substituted "is voluntary, or makes provision" for "in which participation is voluntary, or in which provision is made".

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106−170 applicable to medical assistance for items and services furnished on or after Oct. 1, 2000, see section 201(d) of Pub. L. 106−170, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105−33 effective Aug. 5, 1997, and applicable to contracts entered into or renewed on or after Oct. 1, 1997, see section 4710 of Pub. L. 105−33, set out as a note under section 1396b of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101−239 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1990, without regard to whether or not final regulations have been promulgated by such date, see section 6408(d)(5) of Pub. L. 101−239, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100−360, amendment by Pub. L. 100−360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100−203, effective as if included in the enactment of that provision in Pub. L. 100−203, see section 411(a) of Pub. L. 100−360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4101(d)(2) of Pub. L. 100−203 provided that: "The

amendments made by paragraph (1) [amending this section] shall become effective on July 1, 1988."

Amendment by section 4211(h)(11) of Pub. L. 100−203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100−203, as amended, set out as an Effective Date note under section 1396r of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99−509 applicable to payments under this subchapter for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, see section 9403(h) of Pub. L. 99−509, set out as a note under section 1396a of this title.

Amendment by Pub. L. 99−272 applicable to medical assistance provided for hospice care furnished on or after Apr. 7, 1986, see section 9505(e) of Pub. L. 99−272, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97−448 effective as if originally included as a part of this section as this section was added by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97−248, see section 309(c)(2) of Pub. L. 97−448, set out as a note under section 426−1 of this title.

EFFECTIVE DATE

Section 131(d), formerly Sec. 131(c), of Pub. L. 97−248, redesignated by section 309(a)(8) of Pub. L. 97−448, provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending section 1396a of this title] shall become effective on October 1, 1982.

"(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Sept. 3, 1982]."

−SECREF−

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1396a, 1396b, 1396e, 1396r, 1396r−6, 1397cc of this title; title 8 section 1255a.

−End−

−CITE−

42 USC Sec. 1396p 01/06/03

−EXPCITE−

TITLE 42 − THE PUBLIC HEALTH AND WELFARE

CHAPTER 7 − SOCIAL SECURITY

SUBCHAPTER XIX − GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

−HEAD−

Sec. 1396p. Liens, adjustments and recoveries, and transfers of assets

−STATUTE−

(a) Imposition of lien against property of an individual on account of medical assistance rendered to him under a State plan

(1) No lien may be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf under the State plan, except −

(A) pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual, or

(B) in the case of the real property of an individual −

(i) who is an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of his income required for personal needs, and

(ii) with respect to whom the State determines, after notice and opportunity for a hearing (in accordance with procedures established by the State), that he cannot reasonably be expected to be discharged from the medical institution and to return home,

except as provided in paragraph (2).

(2) No lien may be imposed under paragraph (1)(B) on such individual's home if −

(A) the spouse of such individual,

(B) such individual's child who is under age 21, or (with respect to States eligible to participate in the State program established under subchapter XVI of this chapter) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1382c of this title, or

(C) a sibling of such individual (who has an equity interest in such home and who was residing in such individual's home for a period of at least one year immediately before the date of the individual's admission to the medical institution),

is lawfully residing in such home.

(3) Any lien imposed with respect to an individual pursuant to paragraph (1)(B) shall dissolve upon that individual's discharge from the medical institution and return home.

(b) Adjustment or recovery of medical assistance correctly paid under a State plan

(1) No adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan may be made, except that the State shall seek adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan in the case of the following individuals:

(A) In the case of an individual described in subsection (a)(1)(B) of this section, the State shall seek adjustment or

recovery from the individual's estate or upon sale of the property subject to a lien imposed on account of medical assistance paid on behalf of the individual.

(B) In the case of an individual who was 55 years of age or older when the individual received such medical assistance, the State shall seek adjustment or recovery from the individual's estate, but only for medical assistance consisting of −

(i) nursing facility services, home and community−based services, and related hospital and prescription drug services, or

(ii) at the option of the State, any items or services under the State plan.

(C)(i) In the case of an individual who has received (or is entitled to receive) benefits under a long−term care insurance policy in connection with which assets or resources are disregarded in the manner described in clause (ii), except as provided in such clause, the State shall seek adjustment or recovery from the individual's estate on account of medical assistance paid on behalf of the individual for nursing facility and other long−term care services.

(ii) Clause (i) shall not apply in the case of an individual who received medical assistance under a State plan of a State which had a State plan amendment approved as of May 14, 1993, which provided for the disregard of any assets or resources −

(I) to the extent that payments are made under a long−term care insurance policy; or

(II) because an individual has received (or is entitled to receive) benefits under a long−term care insurance policy.

(2) Any adjustment or recovery under paragraph (1) may be made only after the death of the individual's surviving spouse, if any, and only at a time −

(A) when he has no surviving child who is under age 21, or (with respect to States eligible to participate in the State program established under subchapter XVI of this chapter) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1382c of this title; and

(B) in the case of a lien on an individual's home under subsection (a)(1)(B) of this section, when −

(i) no sibling of the individual (who was residing in the individual's home for a period of at least one year immediately before the date of the individual's admission to the medical institution), and

(ii) no son or daughter of the individual (who was residing in the individual's home for a period of at least two years immediately before the date of the individual's admission to the medical institution, and who establishes to the satisfaction of the State that he or she provided care to such individual which permitted such individual to reside at home rather than in an institution),

is lawfully residing in such home who has lawfully resided in such home on a continuous basis since the date of the

individual's admission to the medical institution.

(3) The State agency shall establish procedures (in accordance with standards specified by the Secretary) under which the agency shall waive the application of this subsection (other than paragraph (1)(C)) if such application would work an undue hardship as determined on the basis of criteria established by the Secretary.

(4) For purposes of this subsection, the term "estate", with respect to a deceased individual −

(A) shall include all real and personal property and other assets included within the individual's estate, as defined for purposes of State probate law; and

(B) may include, at the option of the State (and shall include, in the case of an individual to whom paragraph (1)(C)(i) applies), any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.

(c) Taking into account certain transfers of assets

(1)(A) In order to meet the requirements of this subsection for purposes of section 1396a(a)(18) of this title, the State plan must provide that if an institutionalized individual or the spouse of such an individual (or, at the option of a State, a noninstitutionalized individual or the spouse of such an

individual) disposes of assets for less than fair market value on or after the look−back date specified in subparagraph (B)(i), the individual is ineligible for medical assistance for services described in subparagraph (C)(i) (or, in the case of a noninstitutionalized individual, for the services described in subparagraph (C)(ii)) during the period beginning on the date specified in subparagraph (D) and equal to the number of months specified in subparagraph (E).

(B)(i) The look−back date specified in this subparagraph is a date that is 36 months (or, in the case of payments from a trust or portions of a trust that are treated as assets disposed of by the individual pursuant to paragraph (3)(A)(iii) or (3)(B)(ii) of subsection (d) of this section, 60 months) before the date specified in clause (ii).

(ii) The date specified in this clause, with respect to −

(I) an institutionalized individual is the first date as of which the individual both is an institutionalized individual and has applied for medical assistance under the State plan, or

(II) a noninstitutionalized individual is the date on which the individual applies for medical assistance under the State plan or, if later, the date on which the individual disposes of assets for less than fair market value.

(C)(i) The services described in this subparagraph with respect to an institutionalized individual are the following:

(I) Nursing facility services.

(II) A level of care in any institution equivalent to that of

nursing facility services.

(III) Home or community−based services furnished under a waiver granted under subsection (c) or (d) of section 1396n of this title.

(ii) The services described in this subparagraph with respect to a noninstitutionalized individual are services (not including any services described in clause (i)) that are described in paragraph (7), (22), or (24) of section 1396d(a) of this title, and, at the option of a State, other long−term care services for which medical assistance is otherwise available under the State plan to individuals requiring long−term care.

(D) The date specified in this subparagraph is the first day of the first month during or after which assets have been transferred for less than fair market value and which does not occur in any other periods of ineligibility under this subsection.

(E)(i) With respect to an institutionalized individual, the number of months of ineligibility under this subparagraph for an individual shall be equal to −

(I) the total, cumulative uncompensated value of all assets transferred by the individual (or individual's spouse) on or after the look−back date specified in subparagraph (B)(i), divided by

(II) the average monthly cost to a private patient of nursing facility services in the State (or, at the option of the State, in the community in which the individual is institutionalized) at the time of application.

(ii) With respect to a noninstitutionalized individual, the number of months of ineligibility under this subparagraph for an individual shall not be greater than a number equal to −

(I) the total, cumulative uncompensated value of all assets transferred by the individual (or individual's spouse) on or after the look−back date specified in subparagraph (B)(i), divided by

(II) the average monthly cost to a private patient of nursing facility services in the State (or, at the option of the State, in the community in which the individual is institutionalized) at the time of application.

(iii) The number of months of ineligibility otherwise determined under clause (i) or (ii) with respect to the disposal of an asset shall be reduced −

(I) in the case of periods of ineligibility determined under clause (i), by the number of months of ineligibility applicable to the individual under clause (ii) as a result of such disposal, and

(II) in the case of periods of ineligibility determined under clause (ii), by the number of months of ineligibility applicable to the individual under clause (i) as a result of such disposal.

(2) An individual shall not be ineligible for medical assistance by reason of paragraph (1) to the extent that −

(A) the assets transferred were a home and title to the home was transferred to −

(i) the spouse of such individual;

(ii) a child of such individual who (I) is under age 21, or

(II) (with respect to States eligible to participate in the

State program established under subchapter XVI of this chapter)

is blind or permanently and totally disabled, or (with respect

to States which are not eligible to participate in such

program) is blind or disabled as defined in section 1382c of

this title;

(iii) a sibling of such individual who has an equity interest

in such home and who was residing in such individual's home for

a period of at least one year immediately before the date the

individual becomes an institutionalized individual; or

(iv) a son or daughter of such individual (other than a child

described in clause (ii)) who was residing in such individual's

home for a period of at least two years immediately before the

date the individual becomes an institutionalized individual,

and who (as determined by the State) provided care to such

individual which permitted such individual to reside at home

rather than in such an institution or facility;

(B) the assets −

(i) were transferred to the individual's spouse or to another

for the sole benefit of the individual's spouse,

(ii) were transferred from the individual's spouse to another

for the sole benefit of the individual's spouse,

(iii) were transferred to, or to a trust (including a trust

described in subsection (d)(4) of this section) established

solely for the benefit of, the individual's child described in

subparagraph (A)(ii)(II), or

(iv) were transferred to a trust (including a trust described in subsection (d)(4) of this section) established solely for the benefit of an individual under 65 years of age who is disabled (as defined in section 1382c(a)(3) of this title);

(C) a satisfactory showing is made to the State (in accordance with regulations promulgated by the Secretary) that (i) the individual intended to dispose of the assets either at fair market value, or for other valuable consideration, (ii) the assets were transferred exclusively for a purpose other than to qualify for medical assistance, or (iii) all assets transferred for less than fair market value have been returned to the individual; or

(D) the State determines, under procedures established by the State (in accordance with standards specified by the Secretary), that the denial of eligibility would work an undue hardship as determined on the basis of criteria established by the Secretary;

(!1)

(3) For purposes of this subsection, in the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement, the asset (or the affected portion of such asset) shall be considered to be transferred by such individual when any action is taken, either by such individual or by any other person, that reduces or eliminates such individual's ownership or control of such asset.

(4) A State (including a State which has elected treatment under

section 1396a(f) of this title) may not provide for any period of ineligibility for an individual due to transfer of resources for less than fair market value except in accordance with this subsection. In the case of a transfer by the spouse of an individual which results in a period of ineligibility for medical assistance under a State plan for such individual, a State shall, using a reasonable methodology (as specified by the Secretary), apportion such period of ineligibility (or any portion of such period) among the individual and the individual's spouse if the spouse otherwise becomes eligible for medical assistance under the State plan.

(5) In this subsection, the term "resources" has the meaning given such term in section 1382b of this title, without regard to the exclusion described in subsection (a)(1) thereof.

(d) Treatment of trust amounts

(1) For purposes of determining an individual's eligibility for, or amount of, benefits under a State plan under this subchapter, subject to paragraph (4), the rules specified in paragraph (3) shall apply to a trust established by such individual.

(2)(A) For purposes of this subsection, an individual shall be considered to have established a trust if assets of the individual were used to form all or part of the corpus of the trust and if any of the following individuals established such trust other than by will:

(i) The individual.

(ii) The individual's spouse.

(iii) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse.

(iv) A person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(B) In the case of a trust the corpus of which includes assets of an individual (as determined under subparagraph (A)) and assets of any other person or persons, the provisions of this subsection shall apply to the portion of the trust attributable to the assets of the individual.

(C) Subject to paragraph (4), this subsection shall apply without regard to −

(i) the purposes for which a trust is established,

(ii) whether the trustees have or exercise any discretion under the trust,

(iii) any restrictions on when or whether distributions may be made from the trust, or

(iv) any restrictions on the use of distributions from the trust.

(3)(A) In the case of a revocable trust −

(i) the corpus of the trust shall be considered resources available to the individual,

(ii) payments from the trust to or for the benefit of the individual shall be considered income of the individual, and

(iii) any other payments from the trust shall be considered

assets disposed of by the individual for purposes of subsection (c) of this section.

(B) In the case of an irrevocable trust −

(i) if there are any circumstances under which payment from the trust could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered resources available to the individual, and payments from that portion of the corpus or income −

(I) to or for the benefit of the individual, shall be considered income of the individual, and

(II) for any other purpose, shall be considered a transfer of assets by the individual subject to subsection (c) of this section; and

(ii) any portion of the trust from which, or any income on the corpus from which, no payment could under any circumstances be made to the individual shall be considered, as of the date of establishment of the trust (or, if later, the date on which payment to the individual was foreclosed) to be assets disposed by the individual for purposes of subsection (c) of this section, and the value of the trust shall be determined for purposes of such subsection by including the amount of any payments made from such portion of the trust after such date.

(4) This subsection shall not apply to any of the following trusts:

(A) A trust containing the assets of an individual under age 65

who is disabled (as defined in section 1382c(a)(3) of this title) and which is established for the benefit of such individual by a parent, grandparent, legal guardian of the individual, or a court if the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this subchapter.

(B) A trust established in a State for the benefit of an individual if −

(i) the trust is composed only of pension, Social Security, and other income to the individual (and accumulated income in the trust),

(ii) the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this subchapter; and

(iii) the State makes medical assistance available to individuals described in section 1396a(a)(10)(A)(ii)(V) of this title, but does not make such assistance available to individuals for nursing facility services under section 1396a(a)(10)(C) of this title.

(C) A trust containing the assets of an individual who is disabled (as defined in section 1382c(a)(3) of this title) that meets the following conditions:

(i) The trust is established and managed by a non−profit association.

(ii) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

(iii) Accounts in the trust are established solely for the benefit of individuals who are disabled (as defined in section 1382c(a)(3) of this title) by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court.

(iv) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the State from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the State plan under this subchapter.

(5) The State agency shall establish procedures (in accordance with standards specified by the Secretary) under which the agency waives the application of this subsection with respect to an individual if the individual establishes that such application would work an undue hardship on the individual as determined on the basis of criteria established by the Secretary.

(6) The term "trust" includes any legal instrument or device that is similar to a trust but includes an annuity only to such extent and in such manner as the Secretary specifies.

(e) Definitions

In this section, the following definitions shall apply:

(1) The term "assets", with respect to an individual, includes

all income and resources of the individual and of the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action −

(A) by the individual or such individual's spouse,

(B) by a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual's spouse, or

(C) by any person, including any court or administrative body, acting at the direction or upon the request of the individual or such individual's spouse.

(2) The term "income" has the meaning given such term in section 1382a of this title.

(3) The term "institutionalized individual" means an individual who is an inpatient in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility, or who is described in section 1396a(a)(10)(A)(ii)(VI) of this title.

(4) The term "noninstitutionalized individual" means an individual receiving any of the services specified in subsection (c)(1)(C)(ii) of this section.

(5) The term "resources" has the meaning given such term in section 1382b of this title, without regard (in the case of an institutionalized individual) to the exclusion described in subsection (a)(1) of such section.

−SOURCE−

(Aug. 14, 1935, ch. 531, title XIX, Sec. 1917, as added Pub. L. 97−248, title I, Sec. 132(b), Sept. 3, 1982, 96 Stat. 370; amended Pub. L. 97−448, title III, Sec. 309(b)(21), (22), Jan. 12, 1983, 96 Stat. 2410; Pub. L. 100−203, title IV, Sec. 4211(h)(12), Dec. 22, 1987, 101 Stat. 1330−207; Pub. L. 100−360, title III, Sec. 303(b), title IV, Sec. 411(l)(3)(I), July 1, 1988, 102 Stat. 760, 803; Pub. L. 100−485, title VI, Sec. 608(d)(16)(B), Oct. 13, 1988, 102 Stat. 2417; Pub. L. 101−239, title VI, Sec. 6411(e)(1), Dec. 19, 1989, 103 Stat. 2271; Pub. L. 103−66, title XIII, Secs. 13611(a)−(c), 13612(a)−(c), Aug. 10, 1993, 107 Stat. 622−628.)

−MISC1−

AMENDMENTS

1993 − Subsec. (b)(1). Pub. L. 103−66, Sec. 13612(a), substituted "except that the State shall seek adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan in the case of the following individuals:" and subpars. (A) to (C) for "except − " and former subpars. (A) and (B) which read as follows:

"(A) in the case of an individual described in subsection (a)(1)(B) of this section, from his estate or upon sale of the property subject to a lien imposed on account of medical assistance paid on behalf of such individual, and

"(B) in the case of any other individual who was 65 years of age or older when he received such assistance, from his estate."

Subsec. (b)(3). Pub. L. 103−66, Sec. 13612(b), added par. (3).

Subsec. (b)(4). Pub. L. 103−66, Sec. 13612(c), added par. (4).

Subsec. (c)(1). Pub. L. 103−66, Sec. 13611(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "In order to meet the requirements of this subsection (for purposes of section 1396a(a)(51)(B) of this title), the State plan must provide for a period of ineligibility for nursing facility services and for a level of care in a medical institution equivalent to that of nursing facility services and for services under section 1396n(c) of this title in the case of an institutionalized individual (as defined in paragraph (3)) who, or whose spouse, at any time during or after the 30−month period immediately before the date the individual becomes an institutionalized individual (if the individual is entitled to medical assistance under the State plan on such date) or, if the individual is not so entitled, the date the individual applies for such assistance while an institutionalized individual, disposed of resources for less than fair market value. The period of ineligibility shall begin with the month in which such resources were transferred and the number of months in such period shall be equal to the lesser of −

"(A) 30 months, or

"(B)(i) the total uncompensated value of the resources so transferred, divided by (ii) the average cost, to a private patient at the time of the application, of nursing facility services in the State or, at State option, in the community in which the individual is institutionalized."

Subsec. (c)(2)(A). Pub. L. 103−66, Sec. 13611(a)(2)(A), substituted "assets" for "resources" in introductory provisions.

Subsec. (c)(2)(B). Pub. L. 103−66, Sec. 13611(a)(2)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "the resources were transferred (i) to or from (or to another for the sole benefit of) the individual's spouse, or (ii) to the individual's child described in subparagraph (A)(ii)(II);".

Subsec. (c)(2)(C). Pub. L. 103−66, Sec. 13611(a)(2)(C), in introductory provisions, substituted "with regulations" for "with any regulations", in cl. (i), substituted "assets" for "resources" and struck out "or" at end, in cl. (ii), substituted "assets" for "resources" and ", or" for "; or", and added cl. (iii).

Subsec. (c)(2)(D). Pub. L. 103−66, Sec. 13611(a)(2)(D), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "the State determines that denial of eligibility would work an undue hardship."

Subsec. (c)(3). Pub. L. 103−66, Sec. 13611(a)(2)(E), added par. (3) and struck out former par. (3) which read as follows: "In this subsection, the term 'institutionalized individual' means an individual who is an inpatient in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility, or who is described in section 1396a(a)(10)(A)(ii)(VI) of this title."

Subsec. (c)(4). Pub. L. 103−66, Sec. 13611(a)(2)(F), inserted at end "In the case of a transfer by the spouse of an individual which results in a period of ineligibility for medical assistance under a State plan for such individual, a State shall, using a reasonable methodology (as specified by the Secretary), apportion such period

of ineligibility (or any portion of such period) among the individual and the individual's spouse if the spouse otherwise becomes eligible for medical assistance under the State plan."

Subsec. (d). Pub. L. 103−66, Sec. 13611(b), added subsec. (d).

Subsec. (e). Pub. L. 103−66, Sec. 13611(c), added subsec. (e).

1989 − Subsec. (c)(1). Pub. L. 101−239, Sec. 6411(e)(1)(A), inserted "or whose spouse," after "an institutionalized individual (as defined in paragraph (3)) who,".

Subsec. (c)(2)(B)(i). Pub. L. 101−239, Sec. 6411(e)(1)(B)(i), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "to (or to another for the sole benefit of) the community spouse, as defined in section 1396r−5(h)(2) of this title,,".

Subsec. (c)(2)(B)(ii), (iii). Pub. L. 101−239, Sec. 6411(e)(1)(B)(ii), struck out ", or" after "subparagraph (A)(ii)(II)" in cl. (ii) and struck out cl. (iii) which read as follows: "to (or to another for the sole benefit of) the individual's spouse if such spouse does not transfer such resources to another person other than the spouse for less than fair market value".

1988 − Subsec. (c). Pub. L. 100−360, Sec. 303(b), amended subsec. (c) generally, substituting pars. (1) to (4) relating to taking into account certain transfers of assets, for former pars. (1) to (3) relating to denial of medical assistance, period of eligibility, and exceptions.

Subsec. (c)(1). Pub. L. 100−485, Sec. 608(d)(16)(B)(i), substituted "period of ineligibility for nursing facility services

and for a level of care in a medical institution equivalent to that of nursing facility services and for services under section 1396n(c) of this title in the case of an institutionalized individual (as defined in paragraph (3)) who, at any time during or after the 30−month period immediately before the date the individual becomes an institutionalized individual (if the individual is entitled to medical assistance under the State plan on such date) or, if the individual is not so entitled, the date the individual applies for such assistance while an institutionalized individual" for "period of ineligibility in the case of an institutionalized individual (as defined in paragraph (3)) who, at any time during the 30−month period immediately before the individual's application for medical assistance under the State plan".

Subsec. (c)(2)(A)(ii). Pub. L. 100−485, Sec. 608(d)(16)(B)(ii), inserted subcl. (I) and (II) designations.

Subsec. (c)(2)(A)(iii). Pub. L. 100−485, Sec. 608(d)(16)(B)(iii), substituted "the individual becomes an institutionalized individual" for "of the individual's admission to the medical institution or nursing facility".

Subsec. (c)(2)(A)(iv). Pub. L. 100−485, Sec. 608(d)(16)(B)(iv), substituted "the individual becomes an institutionalized individual" for "of such individual's admission to the medical institution or nursing facility".

Subsec. (c)(2)(B). Pub. L. 100−485, Sec. 608(d)(16)(B)(v), inserted cl. (i) designation, substituted "section 1396r−5(h)(2) of

this title,," for "section 1396r−5(h)(2) of this title, or the individual's child who is blind or permanently and totally disabled", and added cl. (ii).

Subsec. (c)(2)(B)(ii). Pub. L. 100−360, Sec. 411(l)(3)(I), amended Pub. L. 100−203, Sec. 4211(h)(12)(B), see 1987 Amendment note below.

Subsec. (c)(3). Pub. L. 100−485, Sec. 608(d)(16)(B)(vi), substituted "in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility, or who is described in section 1396a(a)(10)(A)(ii)(VI) of this title" for "in a medical institution or nursing facility".

Subsec. (c)(5). Pub. L. 100−485, Sec. 608(d)(16)(B)(vii), added par. (5).

1987 − Subsecs. (a)(1)(B)(i), (c)(2)(B)(i). Pub. L. 100−203, Sec. 4211(h)(12)(A), substituted "nursing facility, intermediate care facility for the mentally retarded" for "skilled nursing facility, intermediate care facility".

Subsec. (c)(2)(B)(ii). Pub. L. 100−203, Sec. 4211(h)(12)(B), as amended by Pub. L. 100−360, Sec. 411(l)(3)(I), substituted "a nursing facility" for "a skilled nursing facility" in two places each in subcls. (I) and (II).

1983 − Subsec. (b)(2)(B). Pub. L. 97−448, Sec. 309(b)(21), substituted "who" for "and" before "has lawfully resided".

Subsec. (c)(2)(B)(iii). Pub. L. 97−448, Sec. 309(b)(22), substituted in subcl. (I) "can" for "cannot" and struck out from

subcl. (IV) the introductory word "if".

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13611(e) of Pub. L. 103−66 provided that:

"(1) The amendments made by this section [amending this section and sections 1396a and 1396r−5 of this title] shall apply, except as provided in this subsection, to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after October 1, 1993, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

"(2) The amendments made by this section shall not apply −

"(A) to medical assistance provided for services furnished before October 1, 1993,

"(B) with respect to assets disposed of on or before the date of the enactment of this Act [Aug. 10, 1993], or

"(C) with respect to trusts established on or before the date of the enactment of this Act.

"(3) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendment made by subsection (b) [amending this section], the State plan shall not be regarded as failing to comply with the requirements imposed by such amendment solely on the basis of its failure to meet these additional requirements before the first day

of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Aug. 10, 1993]. For purposes of the preceding sentence, in the case of a State that has a 2−year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature."

Section 13612(d) of Pub. L. 103−66 provided that:

"(1)(A) Except as provided in subparagraph (B), the amendments made by this section [amending this section] shall apply to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after October 1, 1993, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

"(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements imposed by such amendments solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Aug. 10, 1993]. For purposes of the preceding sentence, in the case of a State that has a 2−year legislative session, each year of such session shall

be deemed to be a separate regular session of the State legislature.

"(2) The amendments made by this section shall not apply to individuals who died before October 1, 1993."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101−239 applicable to transfers occurring after Dec. 19, 1989, see section 6411(e)(4) of Pub. L. 101−239, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100−485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100−360, see section 608(g)(1) of Pub. L. 100−485, set out as a note under section 704 of this title.

Amendment by section 303(b) of Pub. L. 100−360 applicable to payments under this subchapter for calendar quarters beginning on or after July 1, 1988 (except in certain situations requiring State legislative action), without regard to whether or not final regulations to carry out such amendment have been promulgated by such date, and subsection (c) of this section, as amended by section 303(b) of Pub. L. 100−360, applicable to resources disposed of on or after July 1, 1988, but not applicable with respect to inter−spousal transfers occurring before Oct. 1, 1989, see section 303(g)(2), (5) of Pub. L. 100−360, set out as an Effective Date note under section 1396r−5 of this title.

Except as specifically provided in section 411 of Pub. L. 100−360, amendment by section 411(l)(3)(I) of Pub. L. 100−360, as

it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100−203, effective as if included in the enactment of that provision in Pub. L. 100−203, see section 411(a) of Pub. L. 100−360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100−203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100−203, as amended, set out as an Effective Date note under section 1396r of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97−448 effective as if originally included as a part of this section as this section was added by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97−248, see section 309(c)(2) of Pub. L. 97−448, set out as a note under section 426−1 of this title.

EFFECTIVE DATE

Section 132(d) of Pub. L. 97−248 provided that: "The amendments made by this section [enacting this section and amending section 1396a of this title] shall become effective on the date of the enactment of this Act [Sept. 3, 1982], but the provisions of section 1917(c)(2)(B) of the Social Security Act [subsec. (c)(2)(B) of this section] shall not apply with respect to a transfer of

assets which took place prior to such date of enactment."

−SECREF−

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320a−7b, 1382, 1382b,

1396a, 1396r−5 of this title; title 26 section 642.

−FOOTNOTE−

(!1) So in original. The semicolon probably should be a period.

−End−

−CITE−

42 USC Sec. 1396q 01/06/03

−EXPCITE−

TITLE 42 − THE PUBLIC HEALTH AND WELFARE

CHAPTER 7 − SOCIAL SECURITY

SUBCHAPTER XIX − GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

−HEAD−

Sec. 1396q. Application of provisions of subchapter II relating to

subpoenas

−STATUTE−

The provisions of subsections (d) and (e) of section 405 of this

title shall apply with respect to this subchapter to the same

extent as they are applicable with respect to subchapter II of this

chapter, except that, in so applying such subsections, and in

applying section 405(l) of this title thereto, with respect to this

subchapter, any reference therein to the Commissioner of Social

Security or the Social Security Administration shall be considered

a reference to the Secretary or the Department of Health and Human

Services, respectively.

−SOURCE−

(Aug. 14, 1935, ch. 531, title XIX, Sec. 1918, as added Pub. L. 98−369, div. B, title III, Sec. 2370(a), July 18, 1984, 98 Stat. 1110; amended Pub. L. 103−296, title I, Sec. 108(d)(5), Aug. 15, 1994, 108 Stat. 1486.)

−MISC1−

AMENDMENTS

1994 − Pub. L. 103−296 inserted before period at end ", except that, in so applying such subsections, and in applying section 405(l) of this title thereto, with respect to this subchapter, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively".

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103−296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103−296, set out as a note under section 401 of this title.

EFFECTIVE DATE

Section 2370(b) of Pub. L. 98−369 provided that: "The amendment made by this section [enacting this section] shall become effective on the date of the enactment of this Act [July 18, 1984]."

−End−

−CITE−

42 USC Sec. 1396r 01/06/03

−EXPCITE−

TITLE 42 − THE PUBLIC HEALTH AND WELFARE

CHAPTER 7 − SOCIAL SECURITY

SUBCHAPTER XIX − GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

−HEAD−

Sec. 1396r. Requirements for nursing facilities

−STATUTE−

(a) "Nursing facility" defined

In this subchapter, the term "nursing facility" means an institution (or a distinct part of an institution) which −

(1) is primarily engaged in providing to residents −

(A) skilled nursing care and related services for residents who require medical or nursing care,

(B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons, or

(C) on a regular basis, health−related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities,

and is not primarily for the care and treatment of mental diseases;

(2) has in effect a transfer agreement (meeting the requirements of section 1395x(l) of this title) with one or more hospitals having agreements in effect under section 1395cc of this title; and

(3) meets the requirements for a nursing facility described in subsections (b), (c), and (d) of this section.

Such term also includes any facility which is located in a State on an Indian reservation and is certified by the Secretary as meeting the requirements of paragraph (1) and subsections (b), (c), and (d) of this section.

(b) Requirements relating to provision of services

(1) Quality of life

(A) In general

A nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.

(B) Quality assessment and assurance

A nursing facility must maintain a quality assessment and assurance committee, consisting of the director of nursing services, a physician designated by the facility, and at least 3 other members of the facility's staff, which (i) meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary and (ii) develops and implements appropriate plans of action to correct identified quality deficiencies. A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.

(2) Scope of services and activities under plan of care

A nursing facility must provide services and activities to attain or maintain the highest practicable physical, mental, and psychosocial well−being of each resident in accordance with a written plan of care which −

(A) describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met;

(B) is initially prepared, with the participation to the extent practicable of the resident or the resident's family or legal representative, by a team which includes the resident's attending physician and a registered professional nurse with responsibility for the resident; and

(C) is periodically reviewed and revised by such team after each assessment under paragraph (3).

(3) Residents' assessment

(A) Requirement

A nursing facility must conduct a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity, which assessment −

(i) describes the resident's capability to perform daily life functions and significant impairments in functional capacity;

(ii) is based on a uniform minimum data set specified by the Secretary under subsection (f)(6)(A) of this section;

(iii) uses an instrument which is specified by the State under subsection (e)(5) of this section; and

(iv) includes the identification of medical problems.

(B) Certification

(i) In general

Each such assessment must be conducted or coordinated (with the appropriate participation of health professionals) by a registered professional nurse who signs and certifies the completion of the assessment. Each individual who completes a portion of such an assessment shall sign and certify as to the accuracy of that portion of the assessment.

(ii) Penalty for falsification

(I) An individual who willfully and knowingly certifies under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than $1,000 with respect to each assessment.

(II) An individual who willfully and knowingly causes another individual to certify under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than $5,000 with respect to each assessment.

(III) The provisions of section 1320a−7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under this clause in the same manner as such provisions apply to a penalty or proceeding under section 1320a−7a(a) of this title.

(iii) Use of independent assessors

If a State determines, under a survey under subsection (g) of this section or otherwise, that there has been a knowing

and willful certification of false assessments under this paragraph, the State may require (for a period specified by the State) that resident assessments under this paragraph be conducted and certified by individuals who are independent of the facility and who are approved by the State.

(C) Frequency

(i) In general

Such an assessment must be conducted −

(I) promptly upon (but no later than 14 days after the date of) admission for each individual admitted on or after October 1, 1990, and by not later than October 1, 1991, for each resident of the facility on that date;

(II) promptly after a significant change in the resident's physical or mental condition; and

(III) in no case less often than once every 12 months.

(ii) Resident review

The nursing facility must examine each resident no less frequently than once every 3 months and, as appropriate, revise the resident's assessment to assure the continuing accuracy of the assessment.

(D) Use

The results of such an assessment shall be used in developing, reviewing, and revising the resident's plan of care under paragraph (2).

(E) Coordination

Such assessments shall be coordinated with any State−required

preadmission screening program to the maximum extent practicable in order to avoid duplicative testing and effort. In addition, a nursing facility shall notify the State mental health authority or State mental retardation or developmental disability authority, as applicable, promptly after a significant change in the physical or mental condition of a resident who is mentally ill or mentally retarded.

(F) Requirements relating to preadmission screening for mentally ill and mentally retarded individuals

Except as provided in clauses (ii) and (iii) of subsection (e)(7)(A) of this section, a nursing facility must not admit, on or after January 1, 1989, any new resident who −

(i) is mentally ill (as defined in subsection (e)(7)(G)(i) of this section) unless the State mental health authority has determined (based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority) prior to admission that, because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility, and, if the individual requires such level of services, whether the individual requires specialized services for mental illness, or

(ii) is mentally retarded (as defined in subsection (e)(7)(G)(ii) of this section) unless the State mental retardation or developmental disability authority has determined prior to admission that, because of the physical

and mental condition of the individual, the individual requires the level of services provided by a nursing facility, and, if the individual requires such level of services, whether the individual requires specialized services for mental retardation.

A State mental health authority and a State mental retardation or developmental disability authority may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility).

(4) Provision of services and activities

(A) In general

To the extent needed to fulfill all plans of care described in paragraph (2), a nursing facility must provide (or arrange for the provision of) −

(i) nursing and related services and specialized rehabilitative services to attain or maintain the highest practicable physical, mental, and psychosocial well−being of each resident;

(ii) medically−related social services to attain or maintain the highest practicable physical, mental, and psychosocial well−being of each resident;

(iii) pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs

of each resident;

(iv) dietary services that assure that the meals meet the daily nutritional and special dietary needs of each resident;

(v) an on−going program, directed by a qualified professional, of activities designed to meet the interests and the physical, mental, and psychosocial well−being of each resident;

(vi) routine dental services (to the extent covered under the State plan) and emergency dental services to meet the needs of each resident; and

(vii) treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged for (or required to be provided or arranged for) by the State.

The services provided or arranged by the facility must meet professional standards of quality.

(B) Qualified persons providing services

Services described in clauses (i), (ii), (iii), (iv), and (vi) of subparagraph (A) must be provided by qualified persons in accordance with each resident's written plan of care.

(C) Required nursing care; facility waivers

(i) General requirements

With respect to nursing facility services provided on or after October 1, 1990, a nursing facility −

(I) except as provided in clause (ii), must provide 24−hour licensed nursing services which are sufficient to

meet the nursing needs of its residents, and

(II) except as provided in clause (ii), must use the services of a registered professional nurse for at least 8 consecutive hours a day, 7 days a week.

(ii) Waiver by State

To the extent that a facility is unable to meet the requirements of clause (i), a State may waive such requirements with respect to the facility if −

(I) the facility demonstrates to the satisfaction of the State that the facility has been unable, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities), to recruit appropriate personnel,

(II) the State determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility,

(III) the State finds that, for any such periods in which licensed nursing services are not available, a registered professional nurse or a physician is obligated to respond immediately to telephone calls from the facility,

(IV) the State agency granting a waiver of such requirements provides notice of the waiver to the State long−term care ombudsman (established under section 307(a)(12) (!1) of the Older Americans Act of 1965) and the protection and advocacy system in the State for the mentally ill and the mentally retarded, and

(V) the nursing facility that is granted such a waiver by a State notifies residents of the facility (or, where appropriate, the guardians or legal representatives of such residents) and members of their immediate families of the waiver.

A waiver under this clause shall be subject to annual review and to the review of the Secretary and subject to clause (iii) shall be accepted by the Secretary for purposes of this subchapter to the same extent as is the State's certification of the facility. In granting or renewing a waiver, a State may require the facility to use other qualified, licensed personnel.

(iii) Assumption of waiver authority by Secretary

If the Secretary determines that a State has shown a clear pattern and practice of allowing waivers in the absence of diligent efforts by facilities to meet the staffing requirements, the Secretary shall assume and exercise the authority of the State to grant waivers.

(5) Required training of nurse aides

(A) In general

(i) Except as provided in clause (ii), a nursing facility must not use on a full−time basis any individual as a nurse aide in the facility on or after October 1, 1990, for more than 4 months unless the individual −

(I) has completed a training and competency evaluation program, or a competency evaluation program, approved by the

State under subsection (e)(1)(A) of this section, and

(II) is competent to provide nursing or nursing−related services.

(ii) A nursing facility must not use on a temporary, per diem, leased, or on any other basis other than as a permanent employee any individual as a nurse aide in the facility on or after January 1, 1991, unless the individual meets the requirements described in clause (i).

(B) Offering competency evaluation programs for current employees

A nursing facility must provide, for individuals used as a nurse aide by the facility as of January 1, 1990, for a competency evaluation program approved by the State under subsection (e)(1) of this section and such preparation as may be necessary for the individual to complete such a program by October 1, 1990.

(C) Competency

The nursing facility must not permit an individual, other than in a training and competency evaluation program approved by the State, to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competency and must not use such an individual as a nurse aide unless the facility has inquired of any State registry established under subsection (e)(2)(A) of this section that the facility believes will include information concerning the individual.

(D) Re−training required

For purposes of subparagraph (A), if, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual performed nursing or nursing−related services for monetary compensation, such individual shall complete a new training and competency evaluation program, or a new competency evaluation program.

(E) Regular in−service education

The nursing facility must provide such regular performance review and regular in−service education as assures that individuals used as nurse aides are competent to perform services as nurse aides, including training for individuals providing nursing and nursing−related services to residents with cognitive impairments.

(F) "Nurse aide" defined

In this paragraph, the term "nurse aide" means any individual providing nursing or nursing−related services to residents in a nursing facility, but does not include an individual −

(i) who is a licensed health professional (as defined in subparagraph (G)) or a registered dietician, or

(ii) who volunteers to provide such services without monetary compensation.

(G) Licensed health professional defined

In this paragraph, the term "licensed health professional" means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, physical or

occupational therapy assistant, registered professional nurse, licensed practical nurse, or licensed or certified social worker.

(6) Physician supervision and clinical records

A nursing facility must −

(A) require that the health care of every resident be provided under the supervision of a physician (or, at the option of a State, under the supervision of a nurse practitioner, clinical nurse specialist, or physician assistant who is not an employee of the facility but who is working in collaboration with a physician);

(B) provide for having a physician available to furnish necessary medical care in case of emergency; and

(C) maintain clinical records on all residents, which records include the plans of care (described in paragraph (2)) and the residents' assessments (described in paragraph (3)), as well as the results of any pre−admission screening conducted under subsection (e)(7) of this section.

(7) Required social services

In the case of a nursing facility with more than 120 beds, the facility must have at least one social worker (with at least a bachelor's degree in social work or similar professional qualifications) employed full−time to provide or assure the provision of social services.

(8) Information on nurse staffing

(A) In general

A nursing facility shall post daily for each shift the current number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. The information shall be displayed in a uniform manner (as specified by the Secretary) and in a clearly visible place.

(B) Publication of data

A nursing facility shall, upon request, make available to the public the nursing staff data described in subparagraph (A).

(c) Requirements relating to residents' rights

(1) General rights

(A) Specified rights

A nursing facility must protect and promote the rights of each resident, including each of the following rights:

(i) Free choice

The right to choose a personal attending physician, to be fully informed in advance about care and treatment, to be fully informed in advance of any changes in care or treatment that may affect the resident's well−being, and (except with respect to a resident adjudged incompetent) to participate in planning care and treatment or changes in care and treatment.

(ii) Free from restraints

The right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms. Restraints may only be imposed −

(I) to ensure the physical safety of the resident or other residents, and

(II) only upon the written order of a physician that specifies the duration and circumstances under which the restraints are to be used (except in emergency circumstances specified by the Secretary until such an order could reasonably be obtained).

(iii) Privacy

The right to privacy with regard to accommodations, medical treatment, written and telephonic communications, visits, and meetings of family and of resident groups.

(iv) Confidentiality

The right to confidentiality of personal and clinical records and to access to current clinical records of the resident upon request by the resident or the resident's legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request.

(v) Accommodation of needs

The right −

(I) to reside and receive services with reasonable accommodation of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered, and

(II) to receive notice before the room or roommate of the resident in the facility is changed.

(vi) Grievances

The right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(vii) Participation in resident and family groups

The right of the resident to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility.

(viii) Participation in other activities

The right of the resident to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(ix) Examination of survey results

The right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the Secretary or a State with respect to the facility and any plan of correction in effect with respect to the facility.

(x) Refusal of certain transfers

The right to refuse a transfer to another room within the facility, if a purpose of the transfer is to relocate the resident from a portion of the facility that is not a skilled nursing facility (for purposes of subchapter XVIII of this chapter) to a portion of the facility that is such a skilled

nursing facility.

(xi) Other rights

Any other right established by the Secretary.

Clause (iii) shall not be construed as requiring the provision of a private room. A resident's exercise of a right to refuse transfer under clause (x) shall not affect the resident's eligibility or entitlement to medical assistance under this subchapter or a State's entitlement to Federal medical assistance under this subchapter with respect to services furnished to such a resident.

(B) Notice of rights

A nursing facility must −

(i) inform each resident, orally and in writing at the time of admission to the facility, of the resident's legal rights during the stay at the facility and of the requirements and procedures for establishing eligibility for medical assistance under this subchapter, including the right to request an assessment under section 1396r−5(c)(1)(B) of this title;

(ii) make available to each resident, upon reasonable request, a written statement of such rights (which statement is updated upon changes in such rights) including the notice (if any) of the State developed under subsection (e)(6) of this section;

(iii) inform each resident who is entitled to medical assistance under this subchapter −

(I) at the time of admission to the facility or, if later, at the time the resident becomes eligible for such assistance, of the items and services (including those specified under section 1396a(a)(28)(B) of this title) that are included in nursing facility services under the State plan and for which the resident may not be charged (except as permitted in section 1396o of this title), and of those other items and services that the facility offers and for which the resident may be charged and the amount of the charges for such items and services, and

(II) of changes in the items and services described in subclause (I) and of changes in the charges imposed for items and services described in that subclause; and

(iv) inform each other resident, in writing before or at the time of admission and periodically during the resident's stay, of services available in the facility and of related charges for such services, including any charges for services not covered under subchapter XVIII of this chapter or by the facility's basic per diem charge.

The written description of legal rights under this subparagraph shall include a description of the protection of personal funds under paragraph (6) and a statement that a resident may file a complaint with a State survey and certification agency respecting resident abuse and neglect and misappropriation of resident property in the facility.

(C) Rights of incompetent residents

In the case of a resident adjudged incompetent under the laws of a State, the rights of the resident under this subchapter shall devolve upon, and, to the extent judged necessary by a court of competent jurisdiction, be exercised by, the person appointed under State law to act on the resident's behalf.

(D) Use of psychopharmacologic drugs

Psychopharmacologic drugs may be administered only on the orders of a physician and only as part of a plan (included in the written plan of care described in paragraph (2)) designed to eliminate or modify the symptoms for which the drugs are prescribed and only if, at least annually an independent, external consultant reviews the appropriateness of the drug plan of each resident receiving such drugs.

(2) Transfer and discharge rights

(A) In general

A nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless −

(i) the transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;

(ii) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(iii) the safety of individuals in the facility is endangered;

(iv) the health of individuals in the facility would otherwise be endangered;

(v) the resident has failed, after reasonable and appropriate notice, to pay (or to have paid under this subchapter or subchapter XVIII of this chapter on the resident's behalf) for a stay at the facility; or

(vi) the facility ceases to operate.

In each of the cases described in clauses (i) through (iv), the basis for the transfer or discharge must be documented in the resident's clinical record. In the cases described in clauses (i) and (ii), the documentation must be made by the resident's physician, and in the case described in clause (iv) the documentation must be made by a physician. For purposes of clause (v), in the case of a resident who becomes eligible for assistance under this subchapter after admission to the facility, only charges which may be imposed under this subchapter shall be considered to be allowable.

(B) Pre−transfer and pre−discharge notice

(i) In general

Before effecting a transfer or discharge of a resident, a nursing facility must −

(I) notify the resident (and, if known, an immediate family member of the resident or legal representative) of the transfer or discharge and the reasons therefor,

(II) record the reasons in the resident's clinical record (including any documentation required under subparagraph

(A)), and

(III) include in the notice the items described in clause

(iii).

(ii) Timing of notice

The notice under clause (i)(I) must be made at least 30

days in advance of the resident's transfer or discharge

except −

(I) in a case described in clause (iii) or (iv) of

subparagraph (A);

(II) in a case described in clause (ii) of subparagraph

(A), where the resident's health improves sufficiently to

allow a more immediate transfer or discharge;

(III) in a case described in clause (i) of subparagraph

(A), where a more immediate transfer or discharge is

necessitated by the resident's urgent medical needs; or

(IV) in a case where a resident has not resided in the

facility for 30 days.

In the case of such exceptions, notice must be given as many

days before the date of the transfer or discharge as is

practicable.

(iii) Items included in notice

Each notice under clause (i) must include −

(I) for transfers or discharges effected on or after

October 1, 1989, notice of the resident's right to appeal

the transfer or discharge under the State process

established under subsection (e)(3) of this section;

(II) the name, mailing address, and telephone number of the State long−term care ombudsman (established under title III or VII of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq., 3058 et seq.] in accordance with section 712 of the Act [42 U.S.C. 3058g]);

(III) in the case of residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy system for developmentally disabled individuals established under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15041 et seq.]; and

(IV) in the case of mentally ill residents (as defined in subsection (e)(7)(G)(i) of this section), the mailing address and telephone number of the agency responsible for the protection and advocacy system for mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act (!2) [42 U.S.C. 10801 et seq.].

(C) Orientation

A nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(D) Notice on bed−hold policy and readmission

(i) Notice before transfer

Before a resident of a nursing facility is transferred for

hospitalization or therapeutic leave, a nursing facility must provide written information to the resident and an immediate family member or legal representative concerning −

(I) the provisions of the State plan under this subchapter regarding the period (if any) during which the resident will be permitted under the State plan to return and resume residence in the facility, and

(II) the policies of the facility regarding such a period, which policies must be consistent with clause (iii).

(ii) Notice upon transfer

At the time of transfer of a resident to a hospital or for therapeutic leave, a nursing facility must provide written notice to the resident and an immediate family member or legal representative of the duration of any period described in clause (i).

(iii) Permitting resident to return

A nursing facility must establish and follow a written policy under which a resident −

(I) who is eligible for medical assistance for nursing facility services under a State plan,

(II) who is transferred from the facility for hospitalization or therapeutic leave, and

(III) whose hospitalization or therapeutic leave exceeds a period paid for under the State plan for the holding of a bed in the facility for the resident,

will be permitted to be readmitted to the facility immediately upon the first availability of a bed in a semiprivate room in the facility if, at the time of readmission, the resident requires the services provided by the facility.

(E) Information respecting advance directives

A nursing facility must comply with the requirement of section 1396a(w) of this title (relating to maintaining written policies and procedures respecting advance directives).

(F) Continuing rights in case of voluntary withdrawal from participation

(i) In general

In the case of a nursing facility that voluntarily withdraws from participation in a State plan under this subchapter but continues to provide services of the type provided by nursing facilities −

(I) the facility's voluntary withdrawal from participation is not an acceptable basis for the transfer or discharge of residents of the facility who were residing in the facility on the day before the effective date of the withdrawal (including those residents who were not entitled to medical assistance as of such day);

(II) the provisions of this section continue to apply to such residents until the date of their discharge from the facility; and

(III) in the case of each individual who begins residence

in the facility after the effective date of such withdrawal, the facility shall provide notice orally and in a prominent manner in writing on a separate page at the time the individual begins residence of the information described in clause (ii) and shall obtain from each such individual at such time an acknowledgment of receipt of such information that is in writing, signed by the individual, and separate from other documents signed by such individual.

Nothing in this subparagraph shall be construed as affecting any requirement of a participation agreement that a nursing facility provide advance notice to the State or the Secretary, or both, of its intention to terminate the agreement.

(ii) Information for new residents

The information described in this clause for a resident is the following:

(I) The facility is not participating in the program under this subchapter with respect to that resident.

(II) The facility may transfer or discharge the resident from the facility at such time as the resident is unable to pay the charges of the facility, even though the resident may have become eligible for medical assistance for nursing facility services under this subchapter.

(iii) Continuation of payments and oversight authority

Notwithstanding any other provision of this subchapter,

with respect to the residents described in clause (i)(I), a participation agreement of a facility described in clause (i) is deemed to continue in effect under such plan after the effective date of the facility's voluntary withdrawal from participation under the State plan for purposes of −

(I) receiving payments under the State plan for nursing facility services provided to such residents;

(II) maintaining compliance with all applicable requirements of this subchapter; and

(III) continuing to apply the survey, certification, and enforcement authority provided under subsections (g) and (h) of this section (including involuntary termination of a participation agreement deemed continued under this clause).

(iv) No application to new residents

This paragraph (other than subclause (III) of clause (i)) shall not apply to an individual who begins residence in a facility on or after the effective date of the withdrawal from participation under this subparagraph.

(3) Access and visitation rights

A nursing facility must −

(A) permit immediate access to any resident by any representative of the Secretary, by any representative of the State, by an ombudsman or agency described in subclause (II), (III), or (IV) of paragraph (2)(B)(iii), or by the resident's individual physician;

(B) permit immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives of the resident;

(C) permit immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident;

(D) permit reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time; and

(E) permit representatives of the State ombudsman (described in paragraph (2)(B)(iii)(II)), with the permission of the resident (or the resident's legal representative) and consistent with State law, to examine a resident's clinical records.

(4) Equal access to quality care

(A) In general

A nursing facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services required under the State plan for all individuals regardless of source of payment.

(B) Construction

(i) Nothing prohibiting any charges for non−medicaid patients

Subparagraph (A) shall not be construed as prohibiting a nursing facility from charging any amount for services

furnished, consistent with the notice in paragraph (1)(B) describing such charges.

(ii) No additional services required

Subparagraph (A) shall not be construed as requiring a State to offer additional services on behalf of a resident than are otherwise provided under the State plan.

(5) Admissions policy

(A) Admissions

With respect to admissions practices, a nursing facility must –

(i)(I) not require individuals applying to reside or residing in the facility to waive their rights to benefits under this subchapter or subchapter XVIII of this chapter, (II) not require oral or written assurance that such individuals are not eligible for, or will not apply for, benefits under this subchapter or subchapter XVIII of this chapter, and (III) prominently display in the facility written information, and provide to such individuals oral and written information, about how to apply for and use such benefits and how to receive refunds for previous payments covered by such benefits;

(ii) not require a third party guarantee of payment to the facility as a condition of admission (or expedited admission) to, or continued stay in, the facility; and

(iii) in the case of an individual who is entitled to medical assistance for nursing facility services, not charge,

solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State plan under this subchapter, any gift, money, donation, or other consideration as a precondition of admitting (or expediting the admission of) the individual to the facility or as a requirement for the individual's continued stay in the facility.

(B) Construction

(i) No preemption of stricter standards

Subparagraph (A) shall not be construed as preventing States or political subdivisions therein from prohibiting, under State or local law, the discrimination against individuals who are entitled to medical assistance under the State plan with respect to admissions practices of nursing facilities.

(ii) Contracts with legal representatives

Subparagraph (A)(ii) shall not be construed as preventing a facility from requiring an individual, who has legal access to a resident's income or resources available to pay for care in the facility, to sign a contract (without incurring personal financial liability) to provide payment from the resident's income or resources for such care.

(iii) Charges for additional services requested

Subparagraph (A)(iii) shall not be construed as preventing a facility from charging a resident, eligible for medical assistance under the State plan, for items or services the resident has requested and received and that are not

specified in the State plan as included in the term "nursing facility services".

(iv) Bona fide contributions

Subparagraph (A)(iii) shall not be construed as prohibiting a nursing facility from soliciting, accepting, or receiving a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the resident (or potential resident), but only to the extent that such contribution is not a condition of admission, expediting admission, or continued stay in the facility.

(6) Protection of resident funds

(A) In general

The nursing facility −

(i) may not require residents to deposit their personal funds with the facility, and

(ii) upon the written authorization of the resident, must hold, safeguard, and account for such personal funds under a system established and maintained by the facility in accordance with this paragraph.

(B) Management of personal funds

Upon written authorization of a resident under subparagraph (A)(ii), the facility must manage and account for the personal funds of the resident deposited with the facility as follows:

(i) Deposit

The facility must deposit any amount of personal funds in excess of $50 with respect to a resident in an interest

bearing account (or accounts) that is separate from any of the facility's operating accounts and credits all interest earned on such separate account to such account. With respect to any other personal funds, the facility must maintain such funds in a non−interest bearing account or petty cash fund.

(ii) Accounting and records

The facility must assure a full and complete separate accounting of each such resident's personal funds, maintain a written record of all financial transactions involving the personal funds of a resident deposited with the facility, and afford the resident (or a legal representative of the resident) reasonable access to such record.

(iii) Notice of certain balances

The facility must notify each resident receiving medical assistance under the State plan under this subchapter when the amount in the resident's account reaches $200 less than the dollar amount determined under section 1382(a)(3)(B) of this title and the fact that if the amount in the account (in addition to the value of the resident's other nonexempt resources) reaches the amount determined under such section the resident may lose eligibility for such medical assistance or for benefits under subchapter XVI of this chapter.

(iv) Conveyance upon death

Upon the death of a resident with such an account, the facility must convey promptly the resident's personal funds (and a final accounting of such funds) to the individual

administering the resident's estate.

(C) Assurance of financial security

The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary, to assure the security of all personal funds of residents deposited with the facility.

(D) Limitation on charges to personal funds

The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under this subchapter or subchapter XVIII of this chapter.

(7) Limitation on charges in case of medicaid−eligible individuals

(A) In general

A nursing facility may not impose charges, for certain medicaid−eligible individuals for nursing facility services covered by the State under its plan under this subchapter, that exceed the payment amounts established by the State for such services under this subchapter.

(B) "Certain medicaid−eligible individual" defined

In subparagraph (A), the term "certain medicaid−eligible individual" means an individual who is entitled to medical assistance for nursing facility services in the facility under this subchapter but with respect to whom such benefits are not being paid because, in determining the amount of the individual's income to be applied monthly to payment for the

costs of such services, the amount of such income exceeds the payment amounts established by the State for such services under this subchapter.

(8) Posting of survey results

A nursing facility must post in a place readily accessible to residents, and family members and legal representatives of residents, the results of the most recent survey of the facility conducted under subsection (g) of this section.

(d) Requirements relating to administration and other matters

(1) Administration

(A) In general

A nursing facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well−being of each resident (consistent with requirements established under subsection (f)(5) of this section).

(B) Required notices

If a change occurs in −

(i) the persons with an ownership or control interest (as defined in section 1320a−3(a)(3) of this title) in the facility,

(ii) the persons who are officers, directors, agents, or managing employees (as defined in section 1320a−5(b) of this title) of the facility,

(iii) the corporation, association, or other company

responsible for the management of the facility, or

(iv) the individual who is the administrator or director of nursing of the facility,

the nursing facility must provide notice to the State agency responsible for the licensing of the facility, at the time of the change, of the change and of the identity of each new person, company, or individual described in the respective clause.

(C) Nursing facility administrator

The administrator of a nursing facility must meet standards established by the Secretary under subsection (f)(4) of this section.

(2) Licensing and Life Safety Code

(A) Licensing

A nursing facility must be licensed under applicable State and local law.

(B) Life Safety Code

A nursing facility must meet such provisions of such edition (as specified by the Secretary in regulation) of the Life Safety Code of the National Fire Protection Association as are applicable to nursing homes; except that −

(i) the Secretary may waive, for such periods as he deems appropriate, specific provisions of such Code which if rigidly applied would result in unreasonable hardship upon a facility, but only if such waiver would not adversely affect the health and safety of residents or personnel, and

(ii) the provisions of such Code shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects residents of and personnel in nursing facilities.

(3) Sanitary and infection control and physical environment

A nursing facility must −

(A) establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection, and

(B) be designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents, personnel, and the general public.

(4) Miscellaneous

(A) Compliance with Federal, State, and local laws and professional standards

A nursing facility must operate and provide services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of section 1320a−3 of this title) and with accepted professional standards and principles which apply to professionals providing services in such a facility.

(B) Other

A nursing facility must meet such other requirements relating to the health and safety of residents or relating to the

physical facilities thereof as the Secretary may find necessary.

(e) State requirements relating to nursing facility requirements

As a condition of approval of its plan under this subchapter, a State must provide for the following:

(1) Specification and review of nurse aide training and competency evaluation programs and of nurse aide competency evaluation programs

The State must −

(A) by not later than January 1, 1989, specify those training and competency evaluation programs, and those competency evaluation programs, that the State approves for purposes of subsection (b)(5) of this section and that meet the requirements established under subsection (f)(2) of this section, and

(B) by not later than January 1, 1990, provide for the review and reapproval of such programs, at a frequency and using a methodology consistent with the requirements established under subsection (f)(2)(A)(iii) of this section.

The failure of the Secretary to establish requirements under subsection (f)(2) of this section shall not relieve any State of its responsibility under this paragraph.

(2) Nurse aide registry

(A) In general

By not later than January 1, 1989, the State shall establish and maintain a registry of all individuals who have

satisfactorily completed a nurse aide training and competency evaluation program, or a nurse aide competency evaluation program, approved under paragraph (1) in the State, or any individual described in subsection (f)(2)(B)(ii) of this section or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989.

(B) Information in registry

The registry under subparagraph (A) shall provide (in accordance with regulations of the Secretary) for the inclusion of specific documented findings by a State under subsection (g)(1)(C) of this section of resident neglect or abuse or misappropriation of resident property involving an individual listed in the registry, as well as any brief statement of the individual disputing the findings. The State shall make available to the public information in the registry. In the case of inquiries to the registry concerning an individual listed in the registry, any information disclosed concerning such a finding shall also include disclosure of any such statement in the registry relating to the finding or a clear and accurate summary of such a statement.

(C) Prohibition against charges

A State may not impose any charges on a nurse aide relating to the registry established and maintained under subparagraph (A).

(3) State appeals process for transfers and discharges

The State, for transfers and discharges from nursing facilities

effected on or after October 1, 1989, must provide for a fair mechanism, meeting the guidelines established under subsection (f)(3) of this section, for hearing appeals on transfers and discharges of residents of such facilities; but the failure of the Secretary to establish such guidelines under such subsection shall not relieve any State of its responsibility under this paragraph.

(4) Nursing facility administrator standards

By not later than July 1, 1989, the State must have implemented and enforced the nursing facility administrator standards developed under subsection (f)(4) of this section respecting the qualification of administrators of nursing facilities.

(5) Specification of resident assessment instrument

Effective July 1, 1990, the State shall specify the instrument to be used by nursing facilities in the State in complying with the requirement of subsection (b)(3)(A)(iii) of this section. Such instrument shall be −

(A) one of the instruments designated under subsection (f)(6)(B) of this section, or

(B) an instrument which the Secretary has approved as being consistent with the minimum data set of core elements, common definitions, and utilization guidelines specified by the Secretary under subsection (f)(6)(A) of this section.

(6) Notice of medicaid rights

Each State, as a condition of approval of its plan under this subchapter, effective April 1, 1988, must develop (and

periodically update) a written notice of the rights and obligations of residents of nursing facilities (and spouses of such residents) under this subchapter.

(7) State requirements for preadmission screening and resident review

(A) Preadmission screening

(i) In general

Effective January 1, 1989, the State must have in effect a preadmission screening program, for making determinations (using any criteria developed under subsection (f)(8) of this section) described in subsection (b)(3)(F) of this section for mentally ill and mentally retarded individuals (as defined in subparagraph (G)) who are admitted to nursing facilities on or after January 1, 1989. The failure of the Secretary to develop minimum criteria under subsection (f)(8) of this section shall not relieve any State of its responsibility to have a preadmission screening program under this subparagraph or to perform resident reviews under subparagraph (B).

(ii) Clarification with respect to certain readmissions

The preadmission screening program under clause (i) need not provide for determinations in the case of the readmission to a nursing facility of an individual who, after being admitted to the nursing facility, was transferred for care in a hospital.

(iii) Exception for certain hospital discharges

The preadmission screening program under clause (i) shall not apply to the admission to a nursing facility of an individual −

(I) who is admitted to the facility directly from a hospital after receiving acute inpatient care at the hospital,

(II) who requires nursing facility services for the condition for which the individual received care in the hospital, and

(III) whose attending physician has certified, before admission to the facility, that the individual is likely to require less than 30 days of nursing facility services.

(B) State requirement for resident review

(i) For mentally ill residents

As of April 1, 1990, in the case of each resident of a nursing facility who is mentally ill, the State mental health authority must review and determine (using any criteria developed under subsection (f)(8) of this section and based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority) −

(I) whether or not the resident, because of the resident's physical and mental condition, requires the level of services provided by a nursing facility or requires the level of services of an inpatient psychiatric hospital for individuals under age 21 (as described in

section 1396d(h) of this title) or of an institution for mental diseases providing medical assistance to individuals 65 years of age or older; and

(II) whether or not the resident requires specialized services for mental illness.

(ii) For mentally retarded residents

As of April 1, 1990, in the case of each resident of a nursing facility who is mentally retarded, the State mental retardation or developmental disability authority must review and determine (using any criteria developed under subsection (f)(8) of this section) −

(I) whether or not the resident, because of the resident's physical and mental condition, requires the level of services provided by a nursing facility or requires the level of services of an intermediate care facility described under section 1396d(d) of this title; and

(II) whether or not the resident requires specialized services for mental retardation.

(iii) Review required upon change in resident's condition

A review and determination under clause (i) or (ii) must be conducted promptly after a nursing facility has notified the State mental health authority or State mental retardation or developmental disability authority, as applicable, under subsection (b)(3)(E) of this section with respect to a mentally ill or mentally retarded resident, that there has

been a significant change in the resident's physical or mental condition.

(iv) Prohibition of delegation

A State mental health authority, a State mental retardation or developmental disability authority, and a State may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility).

(C) Response to preadmission screening and resident review

As of April 1, 1990, the State must meet the following requirements:

(i) Long−term residents not requiring nursing facility services, but requiring specialized services

In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility, but to require specialized services for mental illness or mental retardation, and who has continuously resided in a nursing facility for at least 30 months before the date of the determination, the State must, in consultation with the resident's family or legal representative and care−givers −

(I) inform the resident of the institutional and noninstitutional alternatives covered under the State plan for the resident,

(II) offer the resident the choice of remaining in the

facility or of receiving covered services in an alternative appropriate institutional or noninstitutional setting,

(III) clarify the effect on eligibility for services under the State plan if the resident chooses to leave the facility (including its effect on readmission to the facility), and

(IV) regardless of the resident's choice, provide for (or arrange for the provision of) such specialized services for the mental illness or mental retardation.

A State shall not be denied payment under this subchapter for nursing facility services for a resident described in this clause because the resident does not require the level of services provided by such a facility, if the resident chooses to remain in such a facility.

(ii) Other residents not requiring nursing facility services, but requiring specialized services

In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility, but to require specialized services for mental illness or mental retardation, and who has not continuously resided in a nursing facility for at least 30 months before the date of the determination, the State must, in consultation with the resident's family or legal representative and care−givers −

(I) arrange for the safe and orderly discharge of the resident from the facility, consistent with the

requirements of subsection (c)(2) of this section,

(II) prepare and orient the resident for such discharge,

and

(III) provide for (or arrange for the provision of) such specialized services for the mental illness or mental retardation.

(iii) Residents not requiring nursing facility services and not requiring specialized services

In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility and not to require specialized services for mental illness or mental retardation, the State must −

(I) arrange for the safe and orderly discharge of the resident from the facility, consistent with the requirements of subsection (c)(2) of this section, and

(II) prepare and orient the resident for such discharge.

(iv) Annual report

Each State shall report to the Secretary annually concerning the number and disposition of residents described in each of clauses (ii) and (iii).

(D) Denial of payment

(i) For failure to conduct preadmission screening or review

No payment may be made under section 1396b(a) of this title with respect to nursing facility services furnished to an individual for whom a determination is required under

subsection (b)(3)(F) of this section or subparagraph (B) but for whom the determination is not made.

(ii) For certain residents not requiring nursing facility level of services

No payment may be made under section 1396b(a) of this title with respect to nursing facility services furnished to an individual (other than an individual described in subparagraph (C)(i)) who does not require the level of services provided by a nursing facility.

(E) Permitting alternative disposition plans

With respect to residents of a nursing facility who are mentally retarded or mentally ill and who are determined under subparagraph (B) not to require the level of services of such a facility, but who require specialized services for mental illness or mental retardation, a State and the nursing facility shall be considered to be in compliance with the requirements of subparagraphs (A) through (C) of this paragraph if, before April 1, 1989, the State and the Secretary have entered into an agreement relating to the disposition of such residents of the facility and the State is in compliance with such agreement. Such an agreement may provide for the disposition of the residents after the date specified in subparagraph (C). The State may revise such an agreement, subject to the approval of the Secretary, before October 1, 1991, but only if, under the revised agreement, all residents subject to the agreement who do not require the level of services of such a facility are

discharged from the facility by not later than April 1, 1994.

(F) Appeals procedures

Each State, as a condition of approval of its plan under this subchapter, effective January 1, 1989, must have in effect an appeals process for individuals adversely affected by determinations under subparagraph (A) or (B).

(G) Definitions

In this paragraph and in subsection (b)(3)(F) of this section:

(i) An individual is considered to be "mentally ill" if the individual has a serious mental illness (as defined by the Secretary in consultation with the National Institute of Mental Health) and does not have a primary diagnosis of dementia (including Alzheimer's disease or a related disorder) or a diagnosis (other than a primary diagnosis) of dementia and a primary diagnosis that is not a serious mental illness.

(ii) An individual is considered to be "mentally retarded" if the individual is mentally retarded or a person with a related condition (as described in section 1396d(d) of this title).

(iii) The term "specialized services" has the meaning given such term by the Secretary in regulations, but does not include, in the case of a resident of a nursing facility, services within the scope of services which the facility must provide or arrange for its residents under subsection (b)(4)

of this section.

(f) Responsibilities of Secretary relating to nursing facility requirements

(1) General responsibility

It is the duty and responsibility of the Secretary to assure that requirements which govern the provision of care in nursing facilities under State plans approved under this subchapter, and the enforcement of such requirements, are adequate to protect the health, safety, welfare, and rights of residents and to promote the effective and efficient use of public moneys.

(2) Requirements for nurse aide training and competency evaluation programs and for nurse aide competency evaluation programs

(A) In general

For purposes of subsections (b)(5) and (e)(1)(A) of this section, the Secretary shall establish, by not later than September 1, 1988 −

(i) requirements for the approval of nurse aide training and competency evaluation programs, including requirements relating to (I) the areas to be covered in such a program (including at least basic nursing skills, personal care skills, recognition of mental health and social service needs, care of cognitively impaired residents, basic restorative services, and residents' rights) and content of the curriculum, (II) minimum hours of initial and ongoing training and retraining (including not less than 75 hours in

the case of initial training), (III) qualifications of instructors, and (IV) procedures for determination of competency;

(ii) requirements for the approval of nurse aide competency evaluation programs, including requirement relating to the areas to be covered in such a program, including at least basic nursing skills, personal care skills, recognition of mental health and social service needs, care of cognitively impaired residents, basic restorative services, and residents' rights, and procedures for determination of competency;

(iii) requirements respecting the minimum frequency and methodology to be used by a State in reviewing such programs' compliance with the requirements for such programs; and

(iv) requirements, under both such programs, that −

(I) provide procedures for determining competency that permit a nurse aide, at the nurse aide's option, to establish competency through procedures or methods other than the passing of a written examination and to have the competency evaluation conducted at the nursing facility at which the aide is (or will be) employed (unless the facility is described in subparagraph (B)(iii)(I)),

(II) prohibit the imposition on a nurse aide who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program of any charges (including any charges

for textbooks and other required course materials and any charges for the competency evaluation) for either such program, and

(III) in the case of a nurse aide not described in subclause (II) who is employed by (or who has received an offer of employment from) a facility not later than 12 months after completing either such program, the State shall provide for the reimbursement of costs incurred in completing such program on a prorata basis during the period in which the nurse aide is so employed.

(B) Approval of certain programs

Such requirements −

(i) may permit approval of programs offered by or in facilities, as well as outside facilities (including employee organizations), and of programs in effect on December 22, 1987;

(ii) shall permit a State to find that an individual who has completed (before July 1, 1989) a nurse aide training and competency evaluation program shall be deemed to have completed such a program approved under subsection (b)(5) of this section if the State determines that, at the time the program was offered, the program met the requirements for approval under such paragraph; and

(iii) subject to subparagraph (C), shall prohibit approval of such a program −

(I) offered by or in a nursing facility which, within the

previous 2 years −

(a) has operated under a waiver under subsection (b)(4)(C)(ii) of this section that was granted on the basis of a demonstration that the facility is unable to provide the nursing care required under subsection (b)(4)(C)(i) of this section for a period in excess of 48 hours during a week;

(b) has been subject to an extended (or partial extended) survey under section 1395i−3(g)(2)(B)(i) of this title or subsection (g)(2)(B)(i) of this section; or

(c) has been assessed a civil money penalty described in section 1395i−3(h)(2)(B)(ii) of this title or subsection (h)(2)(A)(ii) of this section of not less than $5,000, or has been subject to a remedy described in subsection (h)(1)(B)(i) of this section, clauses (!3) (i), (iii), or (iv) of subsection (h)(2)(A) of this section, clauses (!3) (i) or (iii) of section 1395i−3(h)(2)(B) of this title, or section 1395i−3(h)(4) of this title, or

(II) offered by or in a nursing facility unless the State makes the determination, upon an individual's completion of the program, that the individual is competent to provide nursing and nursing−related services in nursing facilities.

A State may not delegate (through subcontract or otherwise) its responsibility under clause (iii)(II) to the nursing facility.

(C) Waiver authorized

Clause (iii)(I) of subparagraph (B) shall not apply to a program offered in (but not by) a nursing facility (or skilled nursing facility for purposes of subchapter XVIII of this chapter) in a State if the State −

(i) determines that there is no other such program offered within a reasonable distance of the facility,

(ii) assures, through an oversight effort, that an adequate environment exists for operating the program in the facility, and

(iii) provides notice of such determination and assurances to the State long−term care ombudsman.

(3) Federal guidelines for State appeals process for transfers and discharges

For purposes of subsections (c)(2)(B)(iii) and (e)(3) of this section, by not later than October 1, 1988, the Secretary shall establish guidelines for minimum standards which State appeals processes under subsection (e)(3) of this section must meet to provide a fair mechanism for hearing appeals on transfers and discharges of residents from nursing facilities.

(4) Secretarial standards qualification of administrators

For purposes of subsections (d)(1)(C) and (e)(4) of this section, the Secretary shall develop, by not later than March 1, 1988, standards to be applied in assuring the qualifications of administrators of nursing facilities.

(5) Criteria for administration

The Secretary shall establish criteria for assessing a nursing facility's compliance with the requirement of subsection (d)(1) of this section with respect to −

(A) its governing body and management,

(B) agreements with hospitals regarding transfers of residents to and from the hospitals and to and from other nursing facilities,

(C) disaster preparedness,

(D) direction of medical care by a physician,

(E) laboratory and radiological services,

(F) clinical records, and

(G) resident and advocate participation.

(6) Specification of resident assessment data set and instruments

The Secretary shall −

(A) not later than January 1, 1989, specify a minimum data set of core elements and common definitions for use by nursing facilities in conducting the assessments required under subsection (b)(3) of this section, and establish guidelines for utilization of the data set; and

(B) by not later than April 1, 1990, designate one or more instruments which are consistent with the specification made under subparagraph (A) and which a State may specify under subsection (e)(5)(A) of this section for use by nursing facilities in complying with the requirements of subsection (b)(3)(A)(iii) of this section.

(7) List of items and services furnished in nursing facilities

not chargeable to the personal funds of a resident

(A) Regulations required

Pursuant to the requirement of section 21(b) of the Medicare−Medicaid Anti−Fraud and Abuse Amendments of 1977, the Secretary shall issue regulations, on or before the first day of the seventh month to begin after December 22, 1987, that define those costs which may be charged to the personal funds of residents in nursing facilities who are individuals receiving medical assistance with respect to nursing facility services under this subchapter and those costs which are to be included in the payment amount under this subchapter for nursing facility services.

(B) Rule if failure to publish regulations

If the Secretary does not issue the regulations under subparagraph (A) on or before the date required in that subparagraph, in the case of a resident of a nursing facility who is eligible to receive benefits for nursing facility services under this subchapter, for purposes of section 1396a(a)(28)(B) of this title, the Secretary shall be deemed to have promulgated regulations under this paragraph which provide that the costs which may not be charged to the personal funds of such resident (and for which payment is considered to be made under this subchapter) include, at a minimum, the costs for routine personal hygiene items and services furnished by the facility.

(8) Federal minimum criteria and monitoring for preadmission

screening and resident review

(A) Minimum criteria

The Secretary shall develop, by not later than October 1, 1988, minimum criteria for States to use in making determinations under subsections (b)(3)(F) and (e)(7)(B) of this section and in permitting individuals adversely affected to appeal such determinations, and shall notify the States of such criteria.

(B) Monitoring compliance

The Secretary shall review, in a sufficient number of cases to allow reasonable inferences, each State's compliance with the requirements of subsection (e)(7)(C)(ii) of this section (relating to discharge and placement for active treatment of certain residents).

(9) Criteria for monitoring State waivers

The Secretary shall develop, by not later than October 1, 1988, criteria and procedures for monitoring State performances in granting waivers pursuant to subsection (b)(4)(C)(ii) of this section.

(g) Survey and certification process

(1) State and Federal responsibility

(A) In general

Under each State plan under this subchapter, the State shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of nursing facilities (other than facilities of the State) with the

requirements of subsections (b), (c), and (d) of this section. The Secretary shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of State nursing facilities with the requirements of such subsections.

(B) Educational program

Each State shall conduct periodic educational programs for the staff and residents (and their representatives) of nursing facilities in order to present current regulations, procedures, and policies under this section.

(C) Investigation of allegations of resident neglect and abuse and misappropriation of resident property

The State shall provide, through the agency responsible for surveys and certification of nursing facilities under this subsection, for a process for the receipt and timely review and investigation of allegations of neglect and abuse and misappropriation of resident property by a nurse aide of a resident in a nursing facility or by another individual used by the facility in providing services to such a resident. The State shall, after notice to the individual involved and a reasonable opportunity for a hearing for the individual to rebut allegations, make a finding as to the accuracy of the allegations. If the State finds that a nurse aide has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding. If the State finds that any other

individual used by the facility has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the appropriate licensure authority. A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.

(D) Removal of name from nurse aide registry

(i) In general

In the case of a finding of neglect under subparagraph (C), the State shall establish a procedure to permit a nurse aide to petition the State to have his or her name removed from the registry upon a determination by the State that −

(I) the employment and personal history of the nurse aide does not reflect a pattern of abusive behavior or neglect; and

(II) the neglect involved in the original finding was a singular occurrence.

(ii) Timing of determination

In no case shall a determination on a petition submitted under clause (i) be made prior to the expiration of the 1−year period beginning on the date on which the name of the petitioner was added to the registry under subparagraph (C).

(E) Construction

The failure of the Secretary to issue regulations to carry out this subsection shall not relieve a State of its responsibility under this subsection.

(2) Surveys

(A) Annual standard survey

(i) In general

Each nursing facility shall be subject to a standard survey, to be conducted without any prior notice to the facility. Any individual who notifies (or causes to be notified) a nursing facility of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1320a−7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a−7a(a) of this title. The Secretary shall review each State's procedures for scheduling and conduct of standard surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

(ii) Contents

Each standard survey shall include, for a case−mix stratified sample of residents −

(I) a survey of the quality of care furnished, as measured by indicators of medical, nursing, and rehabilitative care, dietary and nutrition services, activities and social participation, and sanitation, infection control, and the physical environment,

(II) written plans of care provided under subsection (b)(2) of this section and an audit of the residents' assessments under subsection (b)(3) of this section to determine the accuracy of such assessments and the adequacy of such plans of care, and

(III) a review of compliance with residents' rights under subsection (c) of this section.

(iii) Frequency

(I) In general

Each nursing facility shall be subject to a standard survey not later than 15 months after the date of the previous standard survey conducted under this subparagraph. The statewide average interval between standard surveys of a nursing facility shall not exceed 12 months.

(II) Special surveys

If not otherwise conducted under subclause (I), a standard survey (or an abbreviated standard survey) may be conducted within 2 months of any change of ownership, administration, management of a nursing facility, or director of nursing in order to determine whether the change has resulted in any decline in the quality of care furnished in the facility.

(B) Extended surveys

(i) In general

Each nursing facility which is found, under a standard survey, to have provided substandard quality of care shall be

subject to an extended survey. Any other facility may, at the Secretary's or State's discretion, be subject to such an extended survey (or a partial extended survey).

(ii) Timing

The extended survey shall be conducted immediately after the standard survey (or, if not practicable, not later than 2 weeks after the date of completion of the standard survey).

(iii) Contents

In such an extended survey, the survey team shall review and identify the policies and procedures which produced such substandard quality of care and shall determine whether the facility has complied with all the requirements described in subsections (b), (c), and (d) of this section. Such review shall include an expansion of the size of the sample of residents' assessments reviewed and a review of the staffing, of in−service training, and, if appropriate, of contracts with consultants.

(iv) Construction

Nothing in this paragraph shall be construed as requiring an extended or partial extended survey as a prerequisite to imposing a sanction against a facility under subsection (h) of this section on the basis of findings in a standard survey.

(C) Survey protocol

Standard and extended surveys shall be conducted −

(i) based upon a protocol which the Secretary has

developed, tested, and validated by not later than January 1, 1990, and

(ii) by individuals, of a survey team, who meet such minimum qualifications as the Secretary establishes by not later than such date.

The failure of the Secretary to develop, test, or validate such protocols or to establish such minimum qualifications shall not relieve any State of its responsibility (or the Secretary of the Secretary's responsibility) to conduct surveys under this subsection.

(D) Consistency of surveys

Each State shall implement programs to measure and reduce inconsistency in the application of survey results among surveyors.

(E) Survey teams

(i) In general

Surveys under this subsection shall be conducted by a multidisciplinary team of professionals (including a registered professional nurse).

(ii) Prohibition of conflicts of interest

A State may not use as a member of a survey team under this subsection an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the facility surveyed respecting compliance with the requirements of subsections (b), (c), and (d) of this section, or who has a personal or familial financial

interest in the facility being surveyed.

(iii) Training

The Secretary shall provide for the comprehensive training of State and Federal surveyors in the conduct of standard and extended surveys under this subsection, including the auditing of resident assessments and plans of care. No individual shall serve as a member of a survey team unless the individual has successfully completed a training and testing program in survey and certification techniques that has been approved by the Secretary.

(3) Validation surveys

(A) In general

The Secretary shall conduct onsite surveys of a representative sample of nursing facilities in each State, within 2 months of the date of surveys conducted under paragraph (2) by the State, in a sufficient number to allow inferences about the adequacies of each State's surveys conducted under paragraph (2). In conducting such surveys, the Secretary shall use the same survey protocols as the State is required to use under paragraph (2). If the State has determined that an individual nursing facility meets the requirements of subsections (b), (c), and (d) of this section, but the Secretary determines that the facility does not meet such requirements, the Secretary's determination as to the facility's noncompliance with such requirements is binding and supersedes that of the State survey.

(B) Scope

With respect to each State, the Secretary shall conduct surveys under subparagraph (A) each year with respect to at least 5 percent of the number of nursing facilities surveyed by the State in the year, but in no case less than 5 nursing facilities in the State.

(C) Reduction in administrative costs for substandard performance

If the Secretary finds, on the basis of such surveys, that a State has failed to perform surveys as required under paragraph (2) or that a State's survey and certification performance otherwise is not adequate, the Secretary may provide for the training of survey teams in the State and shall provide for a reduction of the payment otherwise made to the State under section 1396b(a)(2)(D) of this title with respect to a quarter equal to 33 percent multiplied by a fraction, the denominator of which is equal to the total number of residents in nursing facilities surveyed by the Secretary that quarter and the numerator of which is equal to the total number of residents in nursing facilities which were found pursuant to such surveys to be not in compliance with any of the requirements of subsections (b), (c), and (d) of this section. A State that is dissatisfied with the Secretary's findings under this subparagraph may obtain reconsideration and review of the findings under section 1316 of this title in the same manner as a State may seek reconsideration and review under that section

of the Secretary's determination under section 1316(a)(1) of this title.

(D) Special surveys of compliance

Where the Secretary has reason to question the compliance of a nursing facility with any of the requirements of subsections (b), (c), and (d) of this section, the Secretary may conduct a survey of the facility and, on the basis of that survey, make independent and binding determinations concerning the extent to which the nursing facility meets such requirements.

(4) Investigation of complaints and monitoring nursing facility compliance

Each State shall maintain procedures and adequate staff to −

(A) investigate complaints of violations of requirements by nursing facilities, and

(B) monitor, on−site, on a regular, as needed basis, a nursing facility's compliance with the requirements of subsections (b), (c), and (d) of this section, if −

(i) the facility has been found not to be in compliance with such requirements and is in the process of correcting deficiencies to achieve such compliance;

(ii) the facility was previously found not to be in compliance with such requirements, has corrected deficiencies to achieve such compliance, and verification of continued compliance is indicated; or

(iii) the State has reason to question the compliance of the facility with such requirements.

A State may maintain and utilize a specialized team (including an attorney, an auditor, and appropriate health care professionals) for the purpose of identifying, surveying, gathering and preserving evidence, and carrying out appropriate enforcement actions against substandard nursing facilities.

(5) Disclosure of results of inspections and activities

(A) Public information

Each State, and the Secretary, shall make available to the public −

(i) information respecting all surveys and certifications made respecting nursing facilities, including statements of deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans of correction,

(ii) copies of cost reports of such facilities filed under this subchapter or under subchapter XVIII of this chapter,

(iii) copies of statements of ownership under section 1320a−3 of this title, and

(iv) information disclosed under section 1320a−5 of this title.

(B) Notice to ombudsman

Each State shall notify the State long−term care ombudsman (established under title III or VII of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq., 3058 et seq.] in accordance with section 712 of the Act [42 U.S.C. 3058g]) of the State's findings of noncompliance with any of the requirements of

subsections (b), (c), and (d) of this section, or of any adverse action taken against a nursing facility under paragraphs (!4) (1), (2), or (3) of subsection (h) of this section, with respect to a nursing facility in the State.

(C) Notice to physicians and nursing facility administrator licensing board

If a State finds that a nursing facility has provided substandard quality of care, the State shall notify −

(i) the attending physician of each resident with respect to which such finding is made, and

(ii) any State board responsible for the licensing of the nursing facility administrator of the facility.

(D) Access to fraud control units

Each State shall provide its State medicaid fraud and abuse control unit (established under section 1396b(q) of this title) with access to all information of the State agency responsible for surveys and certifications under this subsection.

(h) Enforcement process

(1) In general

If a State finds, on the basis of a standard, extended, or partial extended survey under subsection (g)(2) of this section or otherwise, that a nursing facility no longer meets a requirement of subsection (b), (c), or (d) of this section, and further finds that the facility's deficiencies −

(A) immediately jeopardize the health or safety of its residents, the State shall take immediate action to remove the

jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(A)(iii), or terminate the facility's participation under the State plan and may provide, in addition, for one or more of the other remedies described in paragraph (2); or

(B) do not immediately jeopardize the health or safety of its residents, the State may −

(i) terminate the facility's participation under the State plan,

(ii) provide for one or more of the remedies described in paragraph (2), or

(iii) do both.

Nothing in this paragraph shall be construed as restricting the remedies available to a State to remedy a nursing facility's deficiencies. If a State finds that a nursing facility meets the requirements of subsections (b), (c), and (d) of this section, but, as of a previous period, did not meet such requirements, the State may provide for a civil money penalty under paragraph (2)(A)(ii) for the days in which it finds that the facility was not in compliance with such requirements.

(2) Specified remedies

(A) Listing

Except as provided in subparagraph (B)(ii), each State shall establish by law (whether statute or regulation) at least the following remedies:

(i) Denial of payment under the State plan with respect to

any individual admitted to the nursing facility involved after such notice to the public and to the facility as may be provided for by the State.

(ii) A civil money penalty assessed and collected, with interest, for each day in which the facility is or was out of compliance with a requirement of subsection (b), (c), or (d) of this section. Funds collected by a State as a result of imposition of such a penalty (or as a result of the imposition by the State of a civil money penalty for activities described in subsections (b)(3)(B)(ii)(I), (b)(3)(B)(ii)(II), or (g)(2)(A)(i) of this section) shall be applied to the protection of the health or property of residents of nursing facilities that the State or the Secretary finds deficient, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

(iii) The appointment of temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while −

(I) there is an orderly closure of the facility, or

(II) improvements are made in order to bring the facility into compliance with all the requirements of subsections (b), (c), and (d) of this section.

The temporary management under this clause shall not be terminated under subclause (II) until the State has determined that the facility has the management capability to ensure continued compliance with all the requirements of subsections (b), (c), and (d) of this section.

(iv) The authority, in the case of an emergency, to close the facility, to transfer residents in that facility to other facilities, or both.

The State also shall specify criteria, as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the remedies and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. In addition, the State may provide for other specified remedies, such as directed plans of correction.

(B) Deadline and guidance

(i) Except as provided in clause (ii), as a condition for approval of a State plan for calendar quarters beginning on or after October 1, 1989, each State shall establish the remedies described in clauses (i) through (iv) of subparagraph (A) by not later than October 1, 1989. The Secretary shall provide, through regulations by not later than October 1, 1988, guidance to States in establishing such remedies; but the failure of the

Secretary to provide such guidance shall not relieve a State of the responsibility for establishing such remedies.

(ii) A State may establish alternative remedies (other than termination of participation) other than those described in clauses (i) through (iv) of subparagraph (A), if the State demonstrates to the Secretary's satisfaction that the alternative remedies are as effective in deterring noncompliance and correcting deficiencies as those described in subparagraph (A).

(C) Assuring prompt compliance

If a nursing facility has not complied with any of the requirements of subsections (b), (c), and (d) of this section, within 3 months after the date the facility is found to be out of compliance with such requirements, the State shall impose the remedy described in subparagraph (A)(i) for all individuals who are admitted to the facility after such date.

(D) Repeated noncompliance

In the case of a nursing facility which, on 3 consecutive standard surveys conducted under subsection (g)(2) of this section, has been found to have provided substandard quality of care, the State shall (regardless of what other remedies are provided) −

(i) impose the remedy described in subparagraph (A)(i), and

(ii) monitor the facility under subsection (g)(4)(B) of this section,

until the facility has demonstrated, to the satisfaction of the

State, that it is in compliance with the requirements of subsections (b), (c), and (d) of this section, and that it will remain in compliance with such requirements.

(E) Funding

The reasonable expenditures of a State to provide for temporary management and other expenses associated with implementing the remedies described in clauses (iii) and (iv) of subparagraph (A) shall be considered, for purposes of section 1396b(a)(7) of this title, to be necessary for the proper and efficient administration of the State plan.

(F) Incentives for high quality care

In addition to the remedies specified in this paragraph, a State may establish a program to reward, through public recognition, incentive payments, or both, nursing facilities that provide the highest quality care to residents who are entitled to medical assistance under this subchapter. For purposes of section 1396b(a)(7) of this title, proper expenses incurred by a State in carrying out such a program shall be considered to be expenses necessary for the proper and efficient administration of the State plan under this subchapter.

(3) Secretarial authority

(A) For State nursing facilities

With respect to a State nursing facility, the Secretary shall have the authority and duties of a State under this subsection, including the authority to impose remedies described in clauses

(i), (ii), and (iii) of paragraph (2)(A).

(B) Other nursing facilities

With respect to any other nursing facility in a State, if the Secretary finds that a nursing facility no longer meets a requirement of subsection (b), (c), (d), or (e) of this section, and further finds that the facility's deficiencies −

(i) immediately jeopardize the health or safety of its residents, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in subparagraph (C)(iii), or terminate the facility's participation under the State plan and may provide, in addition, for one or more of the other remedies described in subparagraph (C); or

(ii) do not immediately jeopardize the health or safety of its residents, the Secretary may impose any of the remedies described in subparagraph (C).

Nothing in this subparagraph shall be construed as restricting the remedies available to the Secretary to remedy a nursing facility's deficiencies. If the Secretary finds that a nursing facility meets such requirements but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subparagraph (C)(ii) for the days on which he finds that the facility was not in compliance with such requirements.

(C) Specified remedies

The Secretary may take the following actions with respect to

a finding that a facility has not met an applicable requirement:

(i) Denial of payment

The Secretary may deny any further payments to the State for medical assistance furnished by the facility to all individuals in the facility or to individuals admitted to the facility after the effective date of the finding.

(ii) Authority with respect to civil money penalties

The Secretary may impose a civil money penalty in an amount not to exceed $10,000 for each day of noncompliance. The provisions of section 1320a−7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a−7a(a) of this title.

(iii) Appointment of temporary management

In consultation with the State, the Secretary may appoint temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while −

(I) there is an orderly closure of the facility, or

(II) improvements are made in order to bring the facility into compliance with all the requirements of subsections (b), (c), and (d) of this section.

The temporary management under this clause shall not be

terminated under subclause (II) until the Secretary has determined that the facility has the management capability to ensure continued compliance with all the requirements of subsections (b), (c), and (d) of this section.

The Secretary shall specify criteria, as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the remedies and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. In addition, the Secretary may provide for other specified remedies, such as directed plans of correction.

(D) Continuation of payments pending remediation

The Secretary may continue payments, over a period of not longer than 6 months after the effective date of the findings, under this subchapter with respect to a nursing facility not in compliance with a requirement of subsection (b), (c), or (d) of this section, if −

(i) the State survey agency finds that it is more appropriate to take alternative action to assure compliance of the facility with the requirements than to terminate the certification of the facility, and

(ii) the State has submitted a plan and timetable for corrective action to the Secretary for approval and the

Secretary approves the plan of corrective action.

The Secretary shall establish guidelines for approval of corrective actions requested by States under this subparagraph.

(4) Effective period of denial of payment

A finding to deny payment under this subsection shall terminate when the State or Secretary (or both, as the case may be) finds that the facility is in substantial compliance with all the requirements of subsections (b), (c), and (d) of this section.

(5) Immediate termination of participation for facility where State or Secretary finds noncompliance and immediate jeopardy

If either the State or the Secretary finds that a nursing facility has not met a requirement of subsection (b), (c), or (d) of this section, and finds that the failure immediately jeopardizes the health or safety of its residents, the State or the Secretary, respectively (!5) shall notify the other of such finding, and the State or the Secretary, respectively, shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(A)(iii) or (3)(C)(iii), or terminate the facility's participation under the State plan. If the facility's participation in the State plan is terminated by either the State or the Secretary, the State shall provide for the safe and orderly transfer of the residents eligible under the State plan consistent with the requirements of subsection (c)(2) of this section.

(6) Special rules where State and Secretary do not agree on

finding of noncompliance

(A) State finding of noncompliance and no Secretarial finding of noncompliance

If the Secretary finds that a nursing facility has met all the requirements of subsections (b), (c), and (d) of this section, but a State finds that the facility has not met such requirements and the failure does not immediately jeopardize the health or safety of its residents, the State's findings shall control and the remedies imposed by the State shall be applied.

(B) Secretarial finding of noncompliance and no State finding of noncompliance

If the Secretary finds that a nursing facility has not met all the requirements of subsections (b), (c), and (d) of this section, and that the failure does not immediately jeopardize the health or safety of its residents, but the State has not made such a finding, the Secretary −

(i) may impose any remedies specified in paragraph (3)(C) with respect to the facility, and

(ii) shall (pending any termination by the Secretary) permit continuation of payments in accordance with paragraph (3)(D).

(7) Special rules for timing of termination of participation where remedies overlap

If both the Secretary and the State find that a nursing facility has not met all the requirements of subsections (b),

(c), and (d) of this section, and neither finds that the failure immediately jeopardizes the health or safety of its residents −

(A)(i) if both find that the facility's participation under the State plan should be terminated, the State's timing of any termination shall control so long as the termination date does not occur later than 6 months after the date of the finding to terminate;

(ii) if the Secretary, but not the State, finds that the facility's participation under the State plan should be terminated, the Secretary shall (pending any termination by the Secretary) permit continuation of payments in accordance with paragraph (3)(D); or

(iii) if the State, but not the Secretary, finds that the facility's participation under the State plan should be terminated, the State's decision to terminate, and timing of such termination, shall control; and

(B)(i) if the Secretary or the State, but not both, establishes one or more remedies which are additional or alternative to the remedy of terminating the facility's participation under the State plan, such additional or alternative remedies shall also be applied, or

(ii) if both the Secretary and the State establish one or more remedies which are additional or alternative to the remedy of terminating the facility's participation under the State plan, only the additional or alternative remedies of the Secretary shall apply.

(8) Construction

The remedies provided under this subsection are in addition to those otherwise available under State or Federal law and shall not be construed as limiting such other remedies, including any remedy available to an individual at common law. The remedies described in clauses (i), (iii), and (iv) of paragraph (2)(A) may be imposed during the pendency of any hearing. The provisions of this subsection shall apply to a nursing facility (or portion thereof) notwithstanding that the facility (or portion thereof) also is a skilled nursing facility for purposes of subchapter XVIII of this chapter.

(9) Sharing of information

Notwithstanding any other provision of law, all information concerning nursing facilities required by this section to be filed with the Secretary or a State agency shall be made available by such facilities to Federal or State employees for purposes consistent with the effective administration of programs established under this subchapter and subchapter XVIII of this chapter, including investigations by State medicaid fraud control units.

(i) Construction

Where requirements or obligations under this section are identical to those provided under section 1395i−3 of this title, the fulfillment of those requirements or obligations under section 1395i−3 of this title shall be considered to be the fulfillment of the corresponding requirements or obligations under this section.

−SOURCE−

(Aug. 14, 1935, ch. 531, title XIX, Sec. 1919, as added and amended Pub. L. 100−203, title IV, Secs. 4211(a)(3), (c), 4212(a), (b), 4213(a), 4216, Dec. 22, 1987, 101 Stat. 1330−182, 1330−196, 1330−207, 1330−213, 1330−220, as amended Pub. L. 100−360, title IV, Sec. 411(l)(3)(C)(ii), (6)(B), (8)(A), July 1, 1988, 102 Stat. 803−805; Pub. L. 100−360, title III, Sec. 303(a)(2), title IV, Sec. 411(l)(2)(A)−(D), (F)−(K), (L)(ii), (3)(A), (B), (C)(iii), (D), (5), (6)(A), (7), (8)(B), July 1, 1988, 102 Stat. 760, 801−805, as amended Pub. L. 100−485, title VI, Sec. 608(d)(27)(C)−(E), (I), Oct. 13, 1988, 102 Stat. 2423; Pub. L. 101−239, title VI, Sec. 6901(b)(1), (3), (4)(A), (d)(1), (4), Dec. 19, 1989, 103 Stat. 2298−2301; Pub. L. 101−508, title IV, Secs. 4751(b)(2), 4801(a)(2)−(6)(A), (7), (b)(2)−(5)(A), (6)−(8), (d)(1), (e)(2)−(7)(A), (8)−(10), (12)−(15), (18), Nov. 5, 1990, 104 Stat. 1388−205, 1388−211 to 1388−219; Pub. L. 102−375, title VII, Sec. 708(a)(1)(B), Sept. 30, 1992, 106 Stat. 1292; Pub. L. 104−315, Secs. 1(a), 2(a), (b), Oct. 19, 1996, 110 Stat. 3824; Pub. L. 105−15, Sec. 1, May 15, 1997, 111 Stat. 34; Pub. L. 105−33, title IV, Secs. 4754(a), 4755(b), Aug. 5, 1997, 111 Stat. 526; Pub. L. 106−4, Sec. 2(a), Mar. 25, 1999, 113 Stat. 7; Pub. L. 106−113, div. B, Sec. 1000(a)(6) [title VI, Sec. 608(p)], Nov. 29, 1999, 113 Stat. 1536, 1501A−397; Pub. L. 106−402, title IV, Sec. 401(b)(6)(A), Oct. 30, 2000, 114 Stat. 1738; Pub. L. 106−554, Sec. 1(a)(6) [title IX, Sec. 941(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A−586.)

−REFTEXT−

REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in subsecs. (b)(4)(C)(ii)(IV), (c)(2)(B)(iii)(II), and (g)(5)(B), is Pub. L. 89−73, July 14, 1965, 79 Stat. 218, as amended. Section 307(a)(12) of the Act was repealed by Pub. L. 106−501, title III, Sec. 306(5), Nov. 13, 2000, 114 Stat. 2244, and provisions formerly appearing in section 307(a)(12) of the Act are now contained in section 307(a)(9) of the Act, which is classified to section 3027(a)(9) of this title. Titles III and VII of the Act are classified generally to subchapters III (Sec. 3021 et seq.) and XI (Sec. 3058 et seq.), respectively, of chapter 35 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, referred to in subsec. (c)(2)(B)(iii)(III), is Pub. L. 106−402, Oct. 30, 2000, 114 Stat. 1677. Subtitle C of the Act probably means subtitle C of title I of the Act, which is classified generally to part C (Sec. 15041 et seq.) of subchapter I of chapter 144 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

The Protection and Advocacy for Mentally Ill Individuals Act [of 1986], referred to in subsec. (c)(2)(B)(iii)(IV), was Pub. L. 99−319, May 23, 1986, 100 Stat. 478, as amended. Pub. L. 99−319 was renamed the Protection and Advocacy for Individuals with Mental

Illness Act by Pub. L. 106−310, div. B, title XXXII, Sec. 3206(a), Oct. 17, 2000, 114 Stat. 1193, and is classified generally to chapter 114 (Sec. 10801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10801 of this title and Tables.

Section 6901(b)(4)(B)−(D) of the Omnibus Budget Reconciliation Act of 1989, referred to in subsec. (e)(2)(A), is section 6901(b)(4)(B)−(D) of Pub. L. 101−239, which is set out as a note under section 1395i−3 of this title.

Section 21(b) of the Medicare−Medicaid Anti−Fraud and Abuse Amendments of 1977, referred to in subsec. (f)(7)(A), probably means section 21(b) of the Medicare−Medicaid Anti−Fraud and Abuse Amendments, Pub. L. 95−142, which is set out as a note under section 1395x of this title.

−MISC1−

PRIOR PROVISIONS

A prior section 1919 of act Aug. 14, 1935, was renumbered section 1922 and is classified to section 1396r−3 of this title.

AMENDMENTS

2000 − Subsec. (b)(8). Pub. L. 106−554 added par. (8).

Subsec. (c)(2)(B)(iii)(III). Pub. L. 106−402 substituted "subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000" for "part C of the Developmental Disabilities Assistance and Bill of Rights Act".

1999 − Subsec. (b)(3)(C)(i)(I). Pub. L. 106−113, Sec. 1000(a)(6) [title VI, Sec. 608(p)(1)], struck out "not later than" before "14

days".

Subsec. (c)(2)(F). Pub. L. 106−4 added subpar. (F).

Subsec. (d)(4)(A). Pub. L. 106−113, Sec. 1000(a)(6) [title VI, Sec. 608(p)(2)], inserted closing parenthesis after "section 1320a−3 of this title".

1997 − Subsec. (f)(2)(B)(iii). Pub. L. 105−15, Sec. 1(1), inserted "subject to subparagraph (C)," after "(iii)".

Subsec. (f)(2)(C). Pub. L. 105−15, Sec. 1(2), added subpar. (C).

Subsec. (g)(1)(D), (E). Pub. L. 105−33, Sec. 4755(b), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (h)(3)(D). Pub. L. 105−33, Sec. 4754(a), inserted "and" at end of cl. (i), substituted a period for ", and" at end of cl. (ii), and struck out cl. (iii) which read as follows: "the State agrees to repay to the Federal Government payments received under this subparagraph if the corrective action is not taken in accordance with the approved plan and timetable."

1996 − Subsec. (b)(3)(E). Pub. L. 104−315, Sec. 2(a), inserted at end "In addition, a nursing facility shall notify the State mental health authority or State mental retardation or developmental disability authority, as applicable, promptly after a significant change in the physical or mental condition of a resident who is mentally ill or mentally retarded."

Subsec. (e)(7)(B). Pub. L. 104−315, Sec. 1(a)(1)(A), struck out "annual" before "resident review" in heading.

Subsec. (e)(7)(B)(iii). Pub. L. 104−315, Sec. 2(b), added cl. (iii).

Pub. L. 104−315, Sec. 1(a)(1)(B), struck out cl. (iii) which related to frequency of reviews as annual, preadmission, and initial.

Subsec. (e)(7)(D)(i). Pub. L. 104−315, Sec. 1(a)(2), struck out "annual" before "review" in heading.

1992 − Subsecs. (c)(2)(B)(iii)(II), (g)(5)(B). Pub. L. 102−375 substituted "title III or VII of the Older Americans Act of 1965 in accordance with section 712 of the Act" for "section 307(a)(12) of the Older Americans Act of 1965".

1990 − Subsec. (b)(1)(B). Pub. L. 101−508, Sec. 4801(e)(2), inserted at end "A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph."

Subsec. (b)(3)(C)(i)(I). Pub. L. 101−508, Sec. 4801(e)(3), substituted "not later than 14 days" for "4 days".

Subsec. (b)(3)(F). Pub. L. 101−508, Sec. 4801(b)(8), substituted "specialized services" for "active treatment" in cls. (i) and (ii).

Pub. L. 101−508, Sec. 4801(b)(4)(A), inserted at end "A State mental health authority and a State mental retardation or developmental disability authority may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility)."

Pub. L. 101−508, Sec. 4801(b)(2)(A), substituted "Except as provided in clauses (ii) and (iii) of subsection (e)(7)(A) of this

section, a nursing facility" for "A nursing facility" in introductory provisions.

Subsec. (b)(4)(A)(vii). Pub. L. 101−508, Sec. 4801(e)(4), added cl. (vii).

Subsec. (b)(4)(C)(ii). Pub. L. 101−508, Sec. 4801(e)(5)(A), substituted "To the extent that a facility is unable to meet the requirements of clause (i), a State may waive such requirements with respect to the facility if" for "A State may waive the requirement of subclause (I) or (II) of clause (i) with respect to a facility if" in introductory provisions.

Subsec. (b)(4)(C)(ii)(IV), (V). Pub. L. 101−508, Sec. 4801(e)(5)(B)−(D), which directed amendment of cl. (ii) by adding subcls. (IV) and (V) at the end, was executed by adding subcls. (IV) and (V) after subcl. (III) and before concluding provisions to reflect the probable intent of Congress.

Subsec. (b)(5)(A). Pub. L. 101−508, Sec. 4801(a)(2), designated existing provision as cl. (i), substituted "Except as provided in clause (ii), a nursing facility" for "A nursing facility" and "on a full−time basis" for "(on a full−time, temporary, per diem, or other basis)", redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, and added cl. (ii).

Subsec. (b)(5)(C). Pub. L. 101−508, Sec. 4801(a)(3), substituted "any State registry established under subsection (e)(2)(A) of this section that the facility believes will include information" for "the State registry established under subsection (e)(2)(A) of this section as to information in the registry".

Subsec. (b)(5)(D). Pub. L. 101−508, Sec. 4801(a)(4), inserted before period at end ", or a new competency evaluation program".

Subsec. (b)(5)(F)(i). Pub. L. 101−508, Sec. 4801(e)(6), substituted "(G)) or a registered dietician" for "(G))".

Subsec. (b)(6)(A). Pub. L. 101−508, Sec. 4801(d)(1), inserted before semicolon at end "(or, at the option of a State, under the supervision of a nurse practitioner, clinical nurse specialist, or physician assistant who is not an employee of the facility but who is working in collaboration with a physician)".

Subsec. (c)(1)(A). Pub. L. 101−508, Sec. 4801(e)(8)(B), inserted at end "A resident's exercise of a right to refuse transfer under clause (x) shall not affect the resident's eligibility or entitlement to medical assistance under this subchapter or a State's entitlement to Federal medical assistance under this subchapter with respect to services furnished to such a resident."

Subsec. (c)(1)(A)(iv). Pub. L. 101−508, Sec. 4801(e)(9), inserted before period at end "and to access to current clinical records of the resident upon request by the resident or the resident's legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request".

Subsec. (c)(1)(A)(x), (xi). Pub. L. 101−508, Sec. 4801(e)(8)(A), added cl. (x) and redesignated former cl. (x) as (xi).

Subsec. (c)(1)(B)(ii). Pub. L. 101−508, Sec. 4801(e)(10), inserted "including the notice (if any) of the State developed under subsection (e)(6) of this section" after "in such rights)".

Subsec. (c)(2)(E). Pub. L. 101−508, Sec. 4751(b)(2), added

subpar. (E).

Subsec. (c)(7), (8). Pub. L. 101−508, Sec. 4801(e)(7)(A), added par. (7) and redesignated former par. (7) as (8).

Subsec. (e)(1)(A). Pub. L. 101−508, Sec. 4801(e)(18), substituted "under subsection (f)(2) of this section" for "under clause (i) or (ii) of subsection (f)(2)(A) of this section".

Subsec. (e)(2)(A). Pub. L. 101−508, Sec. 4801(e)(12)(A), inserted ", or any individual described in subsection (f)(2)(B)(ii) of this section or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989" after "in the State".

Subsec. (e)(2)(C). Pub. L. 101−508, Sec. 4801(e)(12)(B), added subpar. (C).

Subsec. (e)(7)(A). Pub. L. 101−508, Sec. 4801(b)(2)(B), designated existing provision as cl. (i), inserted cl. (i) heading, and added cls. (ii) and (iii).

Subsec. (e)(7)(B)(i)(II), (ii)(II). Pub. L. 101−508, Sec. 4801(b)(8), substituted "specialized services" for "active treatment".

Subsec. (e)(7)(B)(iv). Pub. L. 101−508, Sec. 4801(b)(4)(B), added cl. (iv).

Subsec. (e)(7)(C)(i) to (iii). Pub. L. 101−508, Sec. 4801(b)(8), substituted "specialized services" for "active treatment" wherever appearing.

Subsec. (e)(7)(C)(iv). Pub. L. 101−508, Sec. 4801(b)(5)(A), added cl. (iv).

Subsec. (e)(7)(D). Pub. L. 101−508, Sec. 4801(b)(3)(A), struck out "where failure to conduct preadmission screening" after "Denial of payment" in heading, designated existing provisions as cl. (i), inserted cl. (i) heading, and added cl. (ii).

Subsec. (e)(7)(E). Pub. L. 101−508, Sec. 4801(b)(8), substituted "specialized services" for "active treatment".

Pub. L. 101−508, Sec. 4801(b)(6), inserted at end "The State may revise such an agreement, subject to the approval of the Secretary, before October 1, 1991, but only if, under the revised agreement, all residents subject to the agreement who do not require the level of services of such a facility are discharged from the facility by not later than April 1, 1994."

Pub. L. 101−508, Sec. 4801(b)(3)(B), substituted "the requirements of subparagraphs (A) through (C) of this paragraph" for "the requirement of this paragraph".

Subsec. (e)(7)(G)(i). Pub. L. 101−508, Sec. 4801(b)(7), substituted "serious mental illness (as defined by the Secretary in consultation with the National Institute of Mental Health)" for "primary or secondary diagnosis of mental disorder (as defined in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition)" and inserted before period at end "or a diagnosis (other than a primary diagnosis) of dementia and a primary diagnosis that is not a serious mental illness".

Subsec. (e)(7)(G)(iii). Pub. L. 101−508, Sec. 4801(b)(8), substituted "specialized services" for "active treatment".

Subsec. (f)(2)(A)(iv)(II). Pub. L. 101−508, Sec. 4801(a)(5)(B),

inserted "who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program" after "nurse aide".

Subsec. (f)(2)(A)(iv)(III). Pub. L. 101−508, Sec. 4801(a)(5)(A), (C), (D), added subcl. (III).

Subsec. (f)(2)(B). Pub. L. 101−508, Sec. 4801(a)(7), inserted "(through subcontract or otherwise)" after "may not delegate" in last sentence.

Subsec. (f)(2)(B)(iii)(I). Pub. L. 101−508, Sec. 4801(a)(6)(A), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: "offered by or in a nursing facility which has been determined to be out of compliance with the requirements of subsection (b), (c), or (d) of this section, within the previous 2 years, or".

Subsec. (g)(1)(C). Pub. L. 101−508, Sec. 4801(e)(13), inserted at end "A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual."

Subsec. (g)(5)(A)(i). Pub. L. 101−508, Sec. 4801(e)(14), substituted "deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans" for "deficiencies and plans".

Subsec. (g)(5)(B). Pub. L. 101−508, Sec. 4801(e)(15), substituted "or of any adverse action taken against a nursing facility under paragraphs (1), (2), or (3) of subsection (h) of this section, with

respect" for "with respect".

1989 − Subsec. (b)(5)(A). Pub. L. 101−239, Sec. 6901(b)(1)(A), substituted "October 1, 1990" for "January 1, 1990" in introductory provisions.

Subsec. (b)(5)(B). Pub. L. 101−239, Sec. 6901(b)(1)(B), substituted "January 1, 1990" and "October 1, 1990" for "July 1, 1989" and "January 1, 1990", respectively.

Subsec. (c)(1)(A)(ii)(II). Pub. L. 101−239, Sec. 6901(d)(4)(A), substituted "Secretary until such an order could reasonably be obtained)" for "Secretary) until such an order could reasonably be obtained".

Subsec. (c)(1)(A)(v)(I). Pub. L. 101−239, Sec. 6901(d)(4)(B), substituted "accommodation" for "accommodations".

Subsec. (f)(2)(A)(i)(I). Pub. L. 101−239, Sec. 6901(d)(4)(C), substituted "and content of the curriculum" for ", content of the curriculum".

Pub. L. 101−239, Sec. 6901(b)(3)(A), inserted "care of cognitively impaired residents," after "social service needs,".

Subsec. (f)(2)(A)(ii). Pub. L. 101−239, Sec. 6901(b)(3)(B), substituted "recognition of mental health and social service needs, care of cognitively impaired residents" for "cognitive, behavioral and social care".

Subsec. (f)(2)(A)(iv). Pub. L. 101−239, Sec. 6901(b)(3)(C), (D), added cl. (iv).

Subsec. (f)(2)(B)(ii). Pub. L. 101−239, Sec. 6901(b)(4)(A), substituted "July 1, 1989" for "January 1, 1989".

Subsec. (h)(3)(D). Pub. L. 101−239, Sec. 6901(d)(4)(D), substituted "not longer than 6 months after the effective date of the findings" for "not longer than 6 months".

Subsec. (h)(8). Pub. L. 101−239, Sec. 6901(d)(1), inserted at end "The provisions of this subsection shall apply to a nursing facility (or portion thereof) notwithstanding that the facility (or portion thereof) also is a skilled nursing facility for purposes of subchapter XVIII of this chapter."

1988 − Subsec. (b)(3)(A)(iii). Pub. L. 100−360, Sec. 411(l)(2)(B), struck out "in the case of a resident eligible for benefits under this subchapter," before "uses an instrument".

Subsec. (b)(3)(A)(iv). Pub. L. 100−360, Sec. 411(l)(2)(A), as amended by Pub. L. 100−485, Sec. 608(d)(27)(C), struck out "in the case of a resident eligible for benefits under part A of subchapter XVIII of this chapter," before "includes the identification of medical problems".

Subsec. (b)(3)(B)(ii)(III). Pub. L. 100−360, Sec. 411(l)(2)(C), amended subcl. (III) generally. Prior to amendment, subcl. (III) read as follows: "The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1320a−7a of this title."

Subsec. (b)(4)(C)(i)(II). Pub. L. 100−360, Sec. 411(l)(3)(A)(i), inserted "professional" after "registered".

Subsec. (b)(4)(C)(ii). Pub. L. 100−360, Sec. 411(l)(3)(A)(i)−(iv), in heading, substituted "(ii) Waiver" for

"(ii) Facility waivers. − (i) Waiver", in subcl. (III), inserted "professional" after "registered", and in concluding provisions, substituted "clause (iii)" for "clause (ii)" and "use" for "employ".

Subsec. (b)(4)(C)(iii). Pub. L. 100−360, Sec. 411(l)(3)(A)(v), (vi), substituted "(iii) Assumption" for "(ii) Assumption" in heading and "exercise" for "excercise" in text.

Subsec. (b)(5)(A). Pub. L. 100−360, Sec. 411(l)(3)(B), which directed amendment of subpar. (A) by striking "subparagraph (E)" and inserting "subparagraph (F)", could not be executed because of prior amendment by Pub. L. 100−360, Sec. 411(l)(2)(D)(i), see Amendment note below.

Pub. L. 100−360, Sec. 411(l)(2)(D)(i), as amended by Pub. L. 100−485, Sec. 608(d)(27)(D), struck out ", who is not a licensed health professional (as defined in subparagraph (E))," after "any individual" in introductory provisions.

Subsec. (b)(5)(A)(ii). Pub. L. 100−360, Sec. 411(l)(2)(D)(ii), substituted "nursing or nursing−related services" for "such services".

Subsec. (b)(5)(G). Pub. L. 100−360, Sec. 411(l)(2)(D)(iii), inserted "physical or occupational therapy assistant," after "occupational therapist,".

Subsec. (c)(1)(B)(i). Pub. L. 100−360, Sec. 303(a)(2), inserted before semicolon at end "and of the requirements and procedures for establishing eligibility for medical assistance under this subchapter, including the right to request an assessment under

section 1396r−5(c)(1)(B) of this title".

Subsec. (c)(2)(A)(v). Pub. L. 100−360, Sec. 411(l)(2)(F), substituted "for a stay at the facility" for "an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with this subchapter and subchapter XVIII of this chapter".

Subsec. (c)(2)(B)(iii)(III). Pub. L. 100−360, Sec. 411(l)(3)(C)(iii), as added by Pub. L. 100−485, Sec. 608(d)(27)(E), substituted "responsible" for "responsibile".

Subsec. (c)(6). Pub. L. 100−360, Sec. 411(l)(2)(G), substituted "upon the written" for "once the facility accepts the written" in subpar. (A)(ii) and "Upon written" for "Upon a facility's acceptance of written" in subpar. (B).

Subsec. (c)(7). Pub. L. 100−360, Sec. 411(l)(6)(B), amended Pub. L. 100−203, Sec. 4212(b), see 1987 Amendment note below.

Subsec. (e). Pub. L. 100−360, Sec. 411(l)(3)(C)(ii), as added by Pub. L. 100−485, Sec. 608(d)(27)(E), amended Pub. L. 100−203, Sec. 4211, see 1987 Amendment note below.

Subsec. (e)(1). Pub. L. 100−360, Sec. 411(l)(3)(D)(i), (ii), substituted "January 1, 1989" for "September 1, 1988" in subpar. (A) and "January" for "September" in subpar. (B).

Subsec. (e)(2)(B). Pub. L. 100−360, Sec. 411(l)(2)(H), inserted after first sentence "The State shall make available to the public information in the registry."

Subsec. (e)(3). Pub. L. 100−360, Sec. 411(l)(2)(I), inserted "and discharges" after "transfers" in heading and two places in text.

Subsec. (e)(7)(E). Pub. L. 100−360, Sec. 411(l)(3)(D)(iii), substituted "April 1, 1989" for "October 1, 1988".

Subsec. (f). Pub. L. 100−360, Sec. 411(l)(3)(C)(ii), as added by Pub. L. 100−485, Sec. 608(d)(27)(E), amended Pub. L. 100−203, Sec. 4211, see 1987 Amendment note below.

Subsec. (f)(2)(A). Pub. L. 100−360, Sec. 411(l)(3)(D)(iv), substituted "September" for "July" in introductory provisions.

Subsec. (f)(2)(A)(i)(I). Pub. L. 100−360, Sec. 411(l)(2)(J), substituted "recognition of mental health and social service needs" for "cognitive, behavioral and social care".

Subsec. (f)(3). Pub. L. 100−360, Sec. 411(l)(2)(I), inserted "and discharges" after "transfers" in heading and in text.

Subsec. (f)(7)(A). Pub. L. 100−360, Sec. 411(l)(2)(K), substituted "residents" for "patients".

Subsec. (f)(7)(B). Pub. L. 100−360, Sec. 411(l)(2)(L)(ii), substituted "include" for "do not include".

Subsec. (g)(1)(C). Pub. L. 100−360, Sec. 411(l)(5)(A)−(C), substituted "and timely review" for ", review,", inserted "or by another individual used by the facility in providing services to such a resident" after "a nursing facility", and substituted "The State shall, after notice to the individual involved and a reasonable opportunity for a hearing for the individual to rebut allegations, make a finding as to the accuracy of the allegations. If the State finds that a nurse aide has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding.

If the State finds that any other individual used by the facility has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the appropriate licensure authority" for "If the State finds, after notice to the nurse aide involved and a reasonable opportunity for a hearing for the nurse aide to rebut allegations, that a nurse aide whose name is contained in a nurse aide registry has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding".

Subsec. (g)(1)(D). Pub. L. 100−360, Sec. 411(l)(5)(D), substituted "to issue regulations to carry out this subsection" for "to establish standards under subsection (f) of this section".

Subsec. (g)(2)(A)(i). Pub. L. 100−360, Sec. 411(l)(5)(E), amended third sentence generally. Prior to amendment, third sentence read as follows: "The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1320a−7a of this title."

Subsec. (g)(2)(B)(ii). Pub. L. 100−360, Sec. 411(l)(5)(F), as added by Pub. L. 100−485, Sec. 608(d)(27)(I), substituted "practicable" for "practical".

Subsec. (g)(3)(C). Pub. L. 100−360, Sec. 411(l)(6)(A), redesignated subpar. (C), relating to special surveys of compliance, as (D).

Subsec. (g)(3)(D). Pub. L. 100−360, Sec. 411(l)(5)(G), formerly

Sec. 411(l)(5)(F), as redesignated by Pub. L. 100−485, Sec. 608(d)(27)(I), substituted "on the basis of that survey" for "on that basis".

Subsec. (g)(4). Pub. L. 100−360, Sec. 411(l)(5)(H), formerly Sec. 411(l)(5)(G), as redesignated by Pub. L. 100−485, Sec. 608(d)(27)(I), struck out "chronically" after "enforcement actions against" in last sentence.

Subsec. (h). Pub. L. 100−360, Sec. 411(l)(8)(A), made technical correction to directory language of Pub. L. 100−203, Sec. 4213(a), see 1987 Amendment note below.

Subsec. (h)(1). Pub. L. 100−360, Sec. 411(l)(8)(B)(i), substituted "paragraph (2)(A)(ii)"for "paragraph (2)(A)(i)" in last sentence.

Subsec. (h)(2)(B)(i). Pub. L. 100−360, Sec. 411(l)(8)(B)(ii), struck out "or otherwise" after "regulations".

Subsec. (h)(3)(C)(ii). Pub. L. 100−360, Sec. 411(l)(7)(A), substituted ". The provisions of section 1320a−7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a−7a(a) of this title" for "and the Secretary shall impose and collect such a penalty in the same manner as civil money penalties are imposed and collected under section 1320a−7a of this title".

Subsec. (h)(5). Pub. L. 100−360, Sec. 411(l)(8)(B)(iii), substituted "State or the Secretary, respectively" for "State and the Secretary".

Subsec. (h)(9). Pub. L. 100−360, Sec. 411(l)(7)(B), inserted "by such facilities" after "be made available".

1987 − Subsec. (c)(7). Pub. L. 100−203, Sec. 4212(b), as amended by Pub. L. 100−360, Sec. 411(l)(6)(B), added par. (7).

Subsecs. (e), (f). Pub. L. 100−203, Sec. 4211, which contained two subsecs. (c), the first of which amended this section and the second of which enacted provisions set out as a note below, was amended by Pub. L. 100−360, Sec. 411(l)(3)(C)(ii), to delete the designation, heading, and directory language of the first subsec. (c), resulting in subsecs. (e) and (f) being added by section 4211(a)(3) of Pub. L. 100−203, which enacted subsecs. (a) to (d) of this section.

Subsec. (g). Pub. L. 100−203, Sec. 4212(a), added subsec. (g).

Subsec. (h). Pub. L. 100−203, Sec. 4213(a), as amended by Pub. L. 100−360, Sec. 411(l)(8)(A), added subsec. (h).

Subsec. (i). Pub. L. 100−203, Sec. 4216, added subsec. (i).

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106−554 effective Jan. 1, 2003, see section 1(a)(6) [title IX, Sec. 941(c)] of Pub. L. 106−554, set out as a note under section 1395i−3 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106−4, Sec. 2(b), Mar. 25, 1999, 113 Stat. 8, provided that: "The amendment made by subsection (a) [amending this section] applies to voluntary withdrawals from participation occurring on or after the date of the enactment of this Act [Mar. 25, 1999]."

EFFECTIVE DATE OF 1997 AMENDMENT

Section 4754(b) of Pub. L. 105−33 provided that: "The amendments made by subsection (a) [amending this section] take effect on the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1(b) of Pub. L. 104−315 provided that: "The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 19, 1996]."

Section 2(c) of Pub. L. 104−315 provided that: "The amendments made by this section [amending this section] shall apply to changes in physical or mental condition occurring on or after the date of the enactment of this Act [Oct. 19, 1996]."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102−375 inapplicable with respect to fiscal year 1993, see section 4(b) of Pub. L. 103−171, set out as a note under section 3001 of this title.

Amendment by Pub. L. 102−375 inapplicable with respect to fiscal year 1992, see section 905(b)(6) of Pub. L. 102−375, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4751(b)(2) of Pub. L. 101−508 applicable with respect to services furnished on or after the first day of the first month beginning more than 1 year after Nov. 5, 1990, see section 4751(c) of Pub. L. 101−508, set out as a note under section 1396a of this title.

Section 4801(a)(6)(B) of Pub. L. 101−508 provided that: "The amendments made by subparagraph (A) [amending this section] shall

take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100−203], except that a State may not approve a training and competency evaluation program or a competency evaluation program offered by or in a nursing facility which, pursuant to any Federal or State law within the 2−year period beginning on October 1, 1988 −

"(i) had its participation terminated under title XVIII of the Social Security Act [subchapter XVIII of this chapter] or under the State plan under title XIX of such Act [this subchapter];

"(ii) was subject to a denial of payment under either such title;

"(iii) was assessed a civil money penalty not less than $5,000 for deficiencies in nursing facility standards;

"(iv) operated under a temporary management appointed to oversee the operation of the facility and to ensure the health and safety of the facility's residents; or

"(v) pursuant to State action, was closed or had its residents transferred."

Amendment by section 4801(a)(2)−(5), (7) of Pub. L. 101−508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100−203, see section 4801(a)(9) of Pub. L. 101−508, set out as a note under section 1396b of this title.

Section 4801(b)(9) of Pub. L. 101−508 provided that:

"(A) In general. − Except as provided in subparagraph (B), the amendments made by this subsection [amending this section] shall

take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100−203].

"(B) Exception. − The amendments made by paragraphs (4), (6), and (8) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990], without regard to whether or not regulations to implement such amendments have been promulgated."

Section 4801(d)(2) of Pub. L. 101−508 provided that: "The amendment made by paragraph (1) [amending this section] applies with respect to nursing facility services furnished on or after October 1, 1990, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date."

Section 4801(e)(7)(B) of Pub. L. 101−508 provided that: "The amendments made by subparagraph (A) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990], without regard to whether or not regulations to implement such amendments have been promulgated."

Amendment by section 4801(e)(2)−(6), (8)−(10), (12)−(15), and (18) of Pub. L. 101−508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100−203, see section 4801(e)(19) of Pub. L. 101−508, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6901(b)(1), (4)(A) of Pub. L. 101−239 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100−203, and amendment by

section 6901(b)(3) of Pub. L. 101−239 applicable to nurse aide training and competency evaluation programs, and nurse aide competency evaluation programs, offered on or after end of 90−day period beginning on Dec. 19, 1989, but not to affect competency evaluations conducted under programs offered before end of that period, see section 6901(b)(6) of Pub. L. 101−239, set out as a note under section 1395i−3 of this title.

Amendment by section 6901(d)(1) of Pub. L. 101−239 effective Dec. 19, 1989, and amendment by section 6901(d)(4) of Pub. L. 101−239 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100−203, see section 6901(d)(6) of Pub. L. 101−239, set out as a note under section 1395i−3 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100−485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100−360, see section 608(g)(1) of Pub. L. 100−485, set out as a note under section 704 of this title.

Amendment by section 303(a)(2) of Pub. L. 100−360 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Sept. 30, 1989, without regard to whether or not final regulations to carry out such amendment has been promulgated by such date, see section 303(g)(1)(A), (5) of Pub. L. 100−360, set out as an Effective Date note under section 1396r−5 of this title.

Except as specifically provided in section 411 of Pub. L.

100−360, amendment by section 411(l)(2)(A)−(D), (F)−(K), (L)(ii), (3)(A), (B), (C)(ii), (iii), (D), (5), (6)(A), (B), (7), and (8)(A), (B) of Pub. L. 100−360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100−203, effective as if included in the enactment of that provision in Pub. L. 100−203, see section 411(a) of Pub. L. 100−360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE

Section 4214 of title IV of Pub. L. 100−203, as amended by Pub. L. 100−360, title IV, Sec. 411(l)(10), July 1, 1988, 102 Stat. 806, provided that:

"(a) New Requirements and Survey and Certification Process. − Except as otherwise specifically provided in section 1919 of the Social Security Act [this section], the amendments made by sections 4211 [enacting this section, amending sections 1320a−7b, 1396a, 1396b, 1396d, 1396j, 1396l, 1396n, 1396o, 1396p, 1396r, and 1396s of this title, redesignating section 1396r of this title as section 1396r−3 of this title, and amending provisions set out as a note under section 1396r−3 of this title] and 4212 [amending sections 1395cc, 1396a, 1396b, 1396i, and 1396r of this title] (relating to nursing facility requirements and survey and certification requirements) shall apply to nursing facility services furnished on or after October 1, 1990, without regard to whether regulations to implement such amendments are promulgated by such date; except that section 1902(a)(28)(B) of the Social Security Act [section

1396a(a)(28)(B) of this title] (as amended by section 4211(b) of this Act), relating to requiring State medical assistance plans to specify the services included in nursing facility services, shall apply to calendar quarters beginning more than 6 months after the date of the enactment of this Act [Dec. 22, 1987], without regard to whether regulations to implement such section are promulgated by such date.

"(b) Enforcement. − (1) Except as otherwise specifically provided in section 1919 of the Social Security Act [this section], the amendments made by section 4213 of this Act [amending this section and sections 1396a and 1396b of this title] apply to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after the date of the enactment of this Act [Dec. 22, 1987], without regard to whether regulations to implement such amendments are promulgated by such date.

"(2) In applying the amendments made by this part [part 2 of subtitle C (Secs. 4211−4218) of title IV of Pub. L. 100−203, see Tables for classification] for services furnished before October 1, 1990 −

"(A) any reference to a nursing facility is deemed a reference to a skilled nursing facility or intermediate care facility (other than an intermediate care facility for the mentally retarded), and

"(B) with respect to such a skilled nursing facility or intermediate care facility, any reference to a requirement of subsection (b), (c), or (d) of section 1919 of the Social

Security Act [subsec. (b), (c), or (d) of this section], is deemed a reference to the provisions of section 1861(j) or section 1905(c), respectively, of the Social Security Act [section 1395x(j) or 1396d(c) of this title].

"(c) Waiver of Paperwork Reduction. − Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this part and implementing the amendments made by this part."

RETROACTIVE REVIEW

For requirement that procedures developed by a State permit individual to petition for review of any finding made by a State under subsec. (g)(1)(C) of this section or section 1395i−3(g)(1)(C) of this title after Jan. 1, 1995, see section 4755(c) of Pub. L. 105−33, set out as a note under section 1395i−3 of this title.

NURSE AIDE TRAINING AND COMPETENCY EVALUATION; COMPLIANCE ACTIONS

Section 4801(a)(1) of Pub. L. 101−508 provided that: "The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 of the Social Security Act [section 1396c of this title] on the basis of the State's failure to meet the requirement of section 1919(e)(1)(A) of such Act [subsec. (e)(1)(A) of this section] before the effective date of guidelines, issued by the Secretary, establishing requirements under section 1919(f)(2)(A) of such Act, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date."

PREADMISSION SCREENING AND ANNUAL RESIDENT REVIEW; COMPLIANCE ACTIONS

Section 4801(b)(1) of Pub. L. 101−508 provided that: "The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 or section 1919(e)(7)(D) of the Social Security Act [section 1396c of this title and subsec. (e)(7)(D) of this section] on the basis of the State's failure to meet the requirement of section 1919(e)(7)(A) of such Act before the effective date of guidelines, issued by the Secretary, establishing minimum criteria under section 1919(f)(8)(A) of such Act, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date."

RESTRICTION ON ENFORCEMENT PROCESS

Section 4801(c) of Pub. L. 101−508 provided that: "The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 of the Social Security Act [section 1396c of this title] on the basis of the State's failure to meet the requirements of section 1919(h)(2) of such Act [subsec. (h)(2) of this section] before the effective date of guidelines, issued by the Secretary, regarding the establishment of remedies by the State under such section, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirements before such effective date."

STAFFING REQUIREMENTS

Pub. L. 101−508, title IV, Sec. 4801(e)(17), Nov. 5, 1990, 104 Stat. 1388−218, as amended by Pub. L. 105−362, title VI, Sec. 602(b)(1), Nov. 10, 1998, 112 Stat. 3286, provided that:

"(A) Maintaining regulatory standards for certain services. − Any regulations promulgated and applied by the Secretary of Health and Human Services after the date of the enactment of the Omnibus Budget Reconciliation Act of 1987 [Dec. 22, 1987] with respect to services described in clauses (ii), (iv), and (v) of section 1919(b)(4)(A) of the Social Security Act [subsec. (b)(4)(A)(ii), (iv), (v) of this section] shall include requirements for providers of such services that are at least as strict as the requirements applicable to providers of such services prior to the enactment of the Omnibus Budget Reconciliation Act of 1987.

"(B) Study on staffing requirements in nursing facilities. − The Secretary shall conduct a study and report to Congress no later than January 1, 1999, on the appropriateness of establishing minimum caregiver to resident ratios and minimum supervisor to caregiver ratios for skilled nursing facilities serving as providers of services under title XVIII of the Social Security Act [subchapter XVIII of this chapter] and nursing facilities receiving payments under a State plan under title XIX of the Social Security Act [this subchapter], and shall include in such study recommendations regarding appropriate minimum ratios."

NURSE AIDE TRAINING AND COMPETENCY EVALUATION; SATISFACTION OF REQUIREMENTS; WAIVER

For satisfaction of training and competency evaluation

requirements of subsec. (b)(5)(A) of this section and section 1395i−3(b)(5)(A) of this title and authorization for a State to waive such competency evaluation requirements, see section 6901(b)(4)(B)−(D) of Pub. L. 101−239, set out as a note under section 1395i−3 of this title.

PUBLICATION OF PROPOSED REGULATIONS RESPECTING PREADMISSION SCREENING AND ANNUAL RESIDENT REVIEW

Section 6901(c) of Pub. L. 101−239 provided that: "The Secretary of Health and Human Services shall issue proposed regulations to establish the criteria described in section 1919(f)(8)(A) of the Social Security Act [subsec. (f)(8)(A) of this section] by not later than 90 days after the date of the enactment of this Act [Dec. 19, 1989]."

EVALUATION AND REPORT ON IMPLEMENTATION OF RESIDENT ASSESSMENT PROCESS

Section 4211(c) of Pub. L. 100−203 directed Secretary of Health and Human Services to evaluate and report to Congress by not later than Jan. 1, 1993, on implementation of resident assessment process for residents of nursing facilities under amendments made by section 4211(c).

REPORT ON STAFFING REQUIREMENTS

Section 4211(k) of Pub. L. 100−203 directed Secretary of Health and Human Services to report to Congress, by not later than Jan. 1, 1993, on progress made in implementing the nursing facility staffing requirements of 42 U.S.C. 1396r(b)(4)(C), including the number and types of waivers approved under subparagraph (C)(ii) of

such section and the number of facilities which received waivers.

ANNUAL REPORT ON STATUTORY COMPLIANCE AND ENFORCEMENT ACTIONS

Section 4215 of Pub. L. 100−203, as amended by Pub. L. 101−508, title IV, Sec. 4801(b)(5)(B), Nov. 5, 1990, 104 Stat. 1388−214, provided that: "The Secretary of Health and Human Services shall report to the Congress annually on the extent to which nursing facilities are complying with the requirements of subsections (b), (c), and (d) of section 1919 of the Social Security Act [subsecs. (b), (c), and (d) of this section] (as added by the amendments made by this part) and the number and type of enforcement actions taken by States and the Secretary under section 1919(h) of such Act (as added by section 4213 of this Act). Each such report shall also include a summary of the information reported by States under section 1919(e)(7)(C)(iv) of such Act."

−SECREF−

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395i−3, 1395l, 1395x, 1396a, 1396b, 1396d, 1396l, 1396n, 1396r−8, 1396t, 3002 of this title; title 25 section 1680l; title 38 sections 3675, 5503.

−FOOTNOTE−

(!1) See References in Text note below.

(!2) See References in Text note below.

(!3) So in original. Probably should be "clause".

(!4) So in original. Probably should be "paragraph".

(!5) So in original. Probably should be followed by a comma.

−End−

−CITE−

42 USC Sec. 1396r−1 01/06/03

−EXPCITE−

TITLE 42 − THE PUBLIC HEALTH AND WELFARE

CHAPTER 7 − SOCIAL SECURITY

SUBCHAPTER XIX − GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

−HEAD−

Sec. 1396r−1. Presumptive eligibility for pregnant women

−STATUTE−

(a) Ambulatory prenatal care

A State plan approved under section 1396a of this title may provide for making ambulatory prenatal care available to a pregnant woman during a presumptive eligibility period.

(b) Definitions

For purposes of this section −

(1) the term "presumptive eligibility period" means, with respect to a pregnant woman, the period that −

(A) begins with the date on which a qualified provider determines, on the basis of preliminary information, that the family income of the woman does not exceed the applicable income level of eligibility under the State plan, and

(B) ends with (and includes) the earlier of −

(i) the day on which a determination is made with respect to the eligibility of the woman for medical assistance under the State plan, or

(ii) in the case of a woman who does not file an

application by the last day of the month following the month during which the provider makes the determination referred to in subparagraph (A), such last day; and

(2) the term "qualified provider" means any provider that −

(A) is eligible for payments under a State plan approved under this subchapter,

(B) provides services of the type described in subparagraph (A) or (B) of section 1396d(a)(2) of this title or in section 1396d(a)(9) of this title,

(C) is determined by the State agency to be capable of making determinations of the type described in paragraph (1)(A), and

(D)(i) receives funds under −

(I) section 254b or 254c of this title,

(II) subchapter V of this chapter, or

(III) title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.];

(ii) participates in a program established under −

(I) section 1786 of this title, or

(II) section 4(a) of the Agriculture and Consumer Protection Act of 1973;

(iii) participates in a State perinatal program; or

(iv) is the Indian Health Service or is a health program or facility operated by a tribe or tribal organization under the Indian Self−Determination Act (Public Law 93−638) [25 U.S.C. 450f et seq.].

(c) Duties of State agency, qualified providers, and presumptively

eligible pregnant women

(1) The State agency shall provide qualified providers with −

(A) such forms as are necessary for a pregnant woman to make application for medical assistance under the State plan, and

(B) information on how to assist such women in completing and filing such forms.

(2) A qualified provider that determines under subsection (b)(1)(A) of this section that a pregnant woman is presumptively eligible for medical assistance under a State plan shall −

(A) notify the State agency of the determination within 5 working days after the date on which determination is made, and

(B) inform the woman at the time the determination is made that she is required to make application for medical assistance under the State plan by not later than the last day of the month following the month during which the determination is made.

(3) A pregnant woman who is determined by a qualified provider to be presumptively eligible for medical assistance under a State plan shall make application for medical assistance under such plan by not later than the last day of the month following the month during which the determination is made, which application may be the application used for the receipt of medical assistance by individuals described in section 1396a(l)(1)(A) of this title.

(d) Ambulatory prenatal care as medical assistance

Notwithstanding any other provision of this subchapter, ambulatory prenatal care that −

(1) is furnished to a pregnant woman −

(A) during a presumptive eligibility period,

(B) by a provider that is eligible for payments under the

State plan; and

(2) is included in the care and services covered by a State

plan;

shall be treated as medical assistance provided by such plan for

purposes of section 1396b of this title.

−SOURCE−

(Aug. 14, 1935, ch. 531, title XIX, Sec. 1920, as added Pub. L.

99−509, title IX, Sec. 9407(b), Oct. 21, 1986, 100 Stat. 2058;

amended Pub. L. 100−360, title IV, Sec. 411(k)(16)(A), (B), July 1,

1988, 102 Stat. 799; Pub. L. 100−485, title VI, Sec. 608(d)(26)(L),

Oct. 13, 1988, 102 Stat. 2422; Pub. L. 101−508, title IV, Sec.

4605(a), (b), Nov. 5, 1990, 104 Stat. 1388−169; Pub. L. 106−113,

div. B, Sec. 1000(a)(6) [title VI, Sec. 608(q)], Nov. 29, 1999, 113

Stat. 1536, 1501A−397.)

−REFTEXT−

REFERENCES IN TEXT

The Indian Health Care Improvement Act, referred to in subsec.

(b)(2)(D)(i)(III), is Pub. L. 94−437, Sept. 30, 1976, 90 Stat.

1400, as amended. Title V of the Indian Health Care Improvement Act

is classified generally to subchapter IV (Sec. 1651 et seq.) of

chapter 18 of Title 25, Indians. For complete classification of

this Act to the Code, see Short Title note set out under section

1601 of Title 25 and Tables.

Section 4(a) of the Agriculture and Consumer Protection Act of

1973, referred to in subsec. (b)(2)(D)(ii)(II), is section 4(a) of Pub. L. 93−86, Aug. 10, 1973, 87 Stat. 249, as amended, which is set out as a note under section 612c of Title 7, Agriculture.

The Indian Self−Determination Act (Public Law 93−638), referred to in subsec. (b)(2)(D)(iv), is title I of Pub. L. 93−638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (Sec. 450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

−MISC1−

PRIOR PROVISIONS

A prior section 1920 of act Aug. 14, 1935, was renumbered section 1928 and is classified to section 1396s of this title.

AMENDMENTS

1999 − Subsec. (b)(2)(D)(i)(I). Pub. L. 106−113 substituted "section 254b or 254c of this title," for "section 254b, 254c, or 256 of this title,".

1990 − Subsec. (b)(1)(B). Pub. L. 101−508, Sec. 4605(a)(1), inserted "or" at end of cl. (i), redesignated cl. (iii) as (ii) and amended it generally, and struck out former cl. (ii). Prior to amendment, cls. (ii) and (iii) read as follows:

"(ii) the day that is 45 days after the date on which the provider makes the determination referred to in subparagraph (A), or

"(iii) in the case of a woman who does not file an application

for medical assistance within 14 calendar days after the date on which the provider makes the determination referred to in subparagraph (A), the fourteenth calendar day after such determination is made; and".

Subsec. (c)(2)(B). Pub. L. 101−508, Sec. 4605(a)(2), substituted "by not later than the last day of the month following the month during which" for "within 14 calendar days after the date on which".

Subsec. (c)(3). Pub. L. 101−508, Sec. 4605(b), inserted before period at end ", which application may be the application used for the receipt of medical assistance by individuals described in section 1396a(l)(1)(A) of this title".

Pub. L. 101−508, Sec. 4605(a)(2), substituted "by not later than the last day of the month following the month during which" for "within 14 calendar days after the date on which".

1988 − Subsec. (b)(2)(D)(i). Pub. L. 100−360, Sec. 411(k)(16)(B)(i), substituted "section 254b, 254c, or 256 of this title," for "section 254b of this title or section 254c of this title, or" in subcl. (I), substituted "chapter, or" for "chapter;" in subcl. (II), and added subcl. (III).

Subsec. (b)(2)(D)(ii)(II). Pub. L. 100−360, Sec. 411(k)(16)(B)(ii), as amended by Pub. L. 100−485, Sec. 608(d)(26)(L)(i), struck out "or" after "1973;".

Subsec. (b)(2)(D)(iii). Pub. L. 100−360, Sec. 411(k)(16)(B)(iii), as added by Pub. L. 100−485, Sec. 608(d)(26)(L)(iii), substituted "program; or" for "program."

Subsec. (b)(2)(D)(iv). Pub. L. 100−360, Sec. 411(k)(16)(B)(iv), formerly Sec. 411(k)(16)(B)(iii), as redesignated by Pub. L. 100−485, Sec. 608(d)(26)(L)(ii), added cl. (iv).

Subsec. (d)(1)(B). Pub. L. 100−360, Sec. 411(k)(16)(A), substituted "by a provider that is eligible for payments under the State plan" for "by a qualified provider".

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4605(c) of Pub. L. 101−508 provided that:

"(1) The amendments made by subsection (a) [amending this section] apply to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

"(2) The amendment made by subsection (b) [amending this section] shall be effective as if included in the enactment of section 9407(b) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99−509, enacting this section]."

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100−485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100−360, see section 608(g)(1) of Pub. L. 100−485, set out as a note under section 704 of this title.

Section 411(k)(16)(C) of Pub. L. 100−360 provided that: "The amendments made by this paragraph [amending this section] shall be effective as if they were included in section 9407(b) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99−509]."

EFFECTIVE DATE

Section applicable to ambulatory prenatal care furnished in calendar quarters beginning on or after Apr. 1, 1987, without regard to whether or not final regulations to carry out such section have been promulgated, see section 9407(d) of Pub. L. 99−509, set out as an Effective Date of 1986 Amendment note under section 1396a of this title.

−SECREF−

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1396a, 1396b of this title.

−End−

−CITE−

42 USC Sec. 1396r−1a 01/06/03

−EXPCITE−

TITLE 42 − THE PUBLIC HEALTH AND WELFARE

CHAPTER 7 − SOCIAL SECURITY

SUBCHAPTER XIX − GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

−HEAD−

Sec. 1396r−1a. Presumptive eligibility for children

−STATUTE−

(a) In general

A State plan approved under section 1396a of this title may provide for making medical assistance with respect to health care items and services covered under the State plan available to a child during a presumptive eligibility period.

(b) Definitions; regulations

For purposes of this section:

(1) The term "child" means an individual under 19 years of age.

(2) The term "presumptive eligibility period" means, with respect to a child, the period that −

(A) begins with the date on which a qualified entity determines, on the basis of preliminary information, that the family income of the child does not exceed the applicable income level of eligibility under the State plan, and

(B) ends with (and includes) the earlier of −

(i) the day on which a determination is made with respect to the eligibility of the child for medical assistance under the State plan, or

(ii) in the case of a child on whose behalf an application is not filed by the last day of the month following the month during which the entity makes the determination referred to in subparagraph (A), such last day.

(3)(A) Subject to subparagraph (B), the term "qualified entity" means any entity that −

(i)(I) is eligible for payments under a State plan approved under this subchapter and provides items and services described in subsection (a) of this section, (II) is authorized to determine eligibility of a child to participate in a Head Start program under the Head Start Act (42 U.S.C. 9831 et seq.), eligibility of a child to receive child care services for which financial assistance is provided under the Child Care and

Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.), eligibility of an infant or child to receive assistance under the special supplemental nutrition program for women, infants, and children (WIC) under section 1786 of this title (!1) eligibility of a child for medical assistance under the State plan under this subchapter, or eligibility of a child for child health assistance under the program funded under subchapter XXI of this chapter, (III) is an elementary school or secondary school, as such terms are defined in section 8801 of title 20,(!2) an elementary or secondary school operated or supported by the Bureau of Indian Affairs, a State or tribal child support enforcement agency, an organization that is providing emergency food and shelter under a grant under the Stewart B. McKinney Homeless Assistance Act (!2) [42 U.S.C. 11301 et seq.], or a State or tribal office or entity involved in enrollment in the program under this subchapter, under part A of subchapter IV of this chapter, under subchapter XXI of this chapter, or that determines eligibility for any assistance or benefits provided under any program of public or assisted housing that receives Federal funds, including the program under section 8 [42 U.S.C. 1437f] or any other section of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) or under the Native American Housing Assistance and Self−Determination Act of 1996 (25 U.S.C. 4101 et seq.), or (IV) any other entity the State so deems, as approved by the Secretary; and

(ii) is determined by the State agency to be capable of making determinations of the type described in paragraph (2).

(B) The Secretary may issue regulations further limiting those entities that may become qualified entities in order to prevent fraud and abuse and for other reasons.

(C) Nothing in this section shall be construed as preventing a State from limiting the classes of entities that may become qualified entities, consistent with any limitations imposed under subparagraph (B).

(c) Application for medical assistance; procedure upon determination of presumptive eligibility

(1) The State agency shall provide qualified entities with −

(A) such forms as are necessary for an application to be made on behalf of a child for medical assistance under the State plan, and

(B) information on how to assist parents, guardians, and other persons in completing and filing such forms.

(2) A qualified entity that determines under subsection (b)(2) of this section that a child is presumptively eligible for medical assistance under a State plan shall −

(A) notify the State agency of the determination within 5 working days after the date on which determination is made, and

(B) inform the parent or custodian of the child at the time the determination is made that an application for medical assistance under the State plan is required to be made by not later than the last day of the month following the month during which the

determination is made.

(3) In the case of a child who is determined by a qualified entity to be presumptively eligible for medical assistance under a State plan, the parent, guardian, or other person shall make application on behalf of the child for medical assistance under such plan by not later than the last day of the month following the month during which the determination is made, which application may be the application used for the receipt of medical assistance by individuals described in section 1396a(l)(1) of this title.

(d) Treatment of medical assistance

Notwithstanding any other provision of this subchapter, medical assistance for items and services described in subsection (a) of this section that −

(1) are furnished to a child −

(A) during a presumptive eligibility period,

(B) by an entity that is eligible for payments under the State plan; and

(2) are included in the care and services covered by a State plan;

shall be treated as medical assistance provided by such plan for purposes of section 1396b of this title.

−SOURCE−

(Aug. 14, 1935, ch. 531, title XIX, Sec. 1920A, as added Pub. L. 105−33, title IV, Sec. 4912(a), Aug. 5, 1997, 111 Stat. 571; amended Pub. L. 106−113, div. B, Sec. 1000(a)(6) [title VI, Sec. 608(r)], Nov. 29, 1999, 113 Stat. 1536, 1501A−397; Pub. L. 106−554,

Sec. 1(a)(6) [title VII, Sec. 708], Dec. 21, 2000, 114 Stat. 2763, 2763A−577.)

−REFTEXT−

REFERENCES IN TEXT

Section 8801 of title 20, referred to in subsec. (b)(3)(A)(i)(I), was repealed by Pub. L. 107−110, title X, Sec. 1011(5)(C), Jan. 8, 2002, 115 Stat. 1986. See section 7801 of Title 20, Education.

The Head Start Act, referred to in subsec. (b)(3)(A)(i)(II), is subchapter B (Secs. 635−657) of chapter 8 of subtitle A of title VI of Pub. L. 97−35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (Sec. 9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

The Child Care and Development Block Grant Act of 1990, referred to in subsec. (b)(3)(A)(i)(II), is subchapter C (Secs. 658A−658R) of chapter 8 of subtitle A of title VI of Pub. L. 97−35, as added by Pub. L. 101−508, title V, Sec. 5082(2), Nov. 5, 1990, 104 Stat. 1388−236, as amended, which is classified generally to subchapter II−B (Sec. 9858 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

The Stewart B. McKinney Homeless Assistance Act, referred to in subsec. (b)(3)(A)(i)(III), was Pub. L. 100−77, July 22, 1987, 101 Stat. 482, as amended. Pub. L. 100−77 was renamed the McKinney−Vento Homeless Assistance Act by Pub. L. 106−400, Sec. 1,

Oct. 30, 2000, 114 Stat. 1675, and is classified principally to chapter 119 (Sec. 11301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

Part A of subchapter IV of this chapter, referred to in subsec. (b)(3)(A)(i)(III), is classified to section 601 et seq. of this title.

The United States Housing Act of 1937, referred to in subsec. (b)(3)(A)(i)(III), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93−383, title II, Sec. 201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to chapter 8 (Sec. 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The Native American Housing Assistance and Self−Determination Act of 1996, referred to in subsec. (b)(3)(A)(i)(III), is Pub. L. 104−330, Oct. 26, 1996, 110 Stat. 4016, as amended, which is classified principally to chapter 43 (Sec. 4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

−MISC1−

AMENDMENTS

2000 − Subsec. (b)(3)(A)(i). Pub. L. 106−554, Sec. 1(a)(6) [title VII, Sec. 708(b)(1)], substituted "42 U.S.C. 9831" for "42 U.S.C. 9821".

Pub. L. 106−554, Sec. 1(a)(6) [title VII, Sec. 708(a)(2)], inserted before semicolon "eligibility of a child for medical assistance under the State plan under this subchapter, or eligibility of a child for child health assistance under the program funded under subchapter XXI of this chapter, (III) is an elementary school or secondary school, as such terms are defined in section 8801 of title 20, an elementary or secondary school operated or supported by the Bureau of Indian Affairs, a State or tribal child support enforcement agency, an organization that is providing emergency food and shelter under a grant under the Stewart B. McKinney Homeless Assistance Act, or a State or tribal office or entity involved in enrollment in the program under this subchapter, under part A of subchapter IV of this chapter, under subchapter XXI of this chapter, or that determines eligibility for any assistance or benefits provided under any program of public or assisted housing that receives Federal funds, including the program under section 8 or any other section of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) or under the Native American Housing Assistance and Self−Determination Act of 1996 (25 U.S.C. 4101 et seq.), or (IV) any other entity the State so deems, as approved by the Secretary".

Pub. L. 106−554, Sec. 1(a)(6) [title VII, Sec. 708(a)(1)], substituted ", (II)" for "or (II)".

Subsec. (b)(3)(A)(ii). Pub. L. 106−554, Sec. 1(a)(6) [title VII, Sec. 708(b)(2)], substituted "paragraph (2)" for "paragraph (1)(A)".

Subsec. (c)(2). Pub. L. 106−554, Sec. 1(a)(6) [title VII, Sec. 708(b)(3)], substituted "subsection (b)(2)" for "subsection (b)(1)(A)" in introductory provisions.

1999 − Subsec. (d)(1)(B). Pub. L. 106−113 substituted "an entity" for "a entity".

−SECREF−

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1396a, 1396b, 1397ee, 1397gg of this title.

−FOOTNOTE−

(!1) So in original. A comma probably should appear after "title".

(!2) See References in Text note below.

−End−

−CITE−

42 USC Sec. 1396r−1b 01/06/03

−EXPCITE−

TITLE 42 − THE PUBLIC HEALTH AND WELFARE

CHAPTER 7 − SOCIAL SECURITY

SUBCHAPTER XIX − GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

−HEAD−

Sec. 1396r−1b. Presumptive eligibility for certain breast or cervical cancer patients

−STATUTE−

(a) State option

A State plan approved under section 1396a of this title may provide for making medical assistance available to an individual

described in section 1396a(aa) of this title (relating to certain breast or cervical cancer patients) during a presumptive eligibility period.

(b) Definitions

For purposes of this section:

(1) Presumptive eligibility period

The term "presumptive eligibility period" means, with respect to an individual described in subsection (a) of this section, the period that −

(A) begins with the date on which a qualified entity determines, on the basis of preliminary information, that the individual is described in section 1396a(aa) of this title; and

(B) ends with (and includes) the earlier of −

(i) the day on which a determination is made with respect to the eligibility of such individual for services under the State plan; or

(ii) in the case of such an individual who does not file an application by the last day of the month following the month during which the entity makes the determination referred to in subparagraph (A), such last day.

(2) Qualified entity

(A) In general

Subject to subparagraph (B), the term "qualified entity" means any entity that −

(i) is eligible for payments under a State plan approved under this subchapter; and

(ii) is determined by the State agency to be capable of making determinations of the type described in paragraph (1)(A).

(B) Regulations

The Secretary may issue regulations further limiting those entities that may become qualified entities in order to prevent fraud and abuse and for other reasons.

(C) Rule of construction

Nothing in this paragraph shall be construed as preventing a State from limiting the classes of entities that may become qualified entities, consistent with any limitations imposed under subparagraph (B).

(c) Administration

(1) In general

The State agency shall provide qualified entities with −

(A) such forms as are necessary for an application to be made by an individual described in subsection (a) of this section for medical assistance under the State plan; and

(B) information on how to assist such individuals in completing and filing such forms.

(2) Notification requirements

A qualified entity that determines under subsection (b)(1)(A) of this section that an individual described in subsection (a) of this section is presumptively eligible for medical assistance under a State plan shall −

(A) notify the State agency of the determination within 5

working days after the date on which determination is made; and

(B) inform such individual at the time the determination is made that an application for medical assistance under the State plan is required to be made by not later than the last day of the month following the month during which the determination is made.

(3) Application for medical assistance

In the case of an individual described in subsection (a) of this section who is determined by a qualified entity to be presumptively eligible for medical assistance under a State plan, the individual shall apply for medical assistance under such plan by not later than the last day of the month following the month during which the determination is made.

(d) Payment

Notwithstanding any other provision of this subchapter, medical assistance that −

(1) is furnished to an individual described in subsection (a) of this section −

(A) during a presumptive eligibility period;

(B) by a (!1) entity that is eligible for payments under the State plan; and

(2) is included in the care and services covered by the State plan,

shall be treated as medical assistance provided by such plan for purposes of clause (4) of the first sentence of section 1396d(b) of this title.

−SOURCE−

(Aug. 14, 1935, ch. 531, title XIX, Sec. 1920B, as added Pub. L. 106−354, Sec. 2(b)(1), Oct. 24, 2000, 114 Stat. 1382.)

−MISC1−

EFFECTIVE DATE

Section applicable to medical assistance for items and services furnished on or after Oct. 1, 2000, without regard to whether final regulations to carry out such amendments have been promulgated by such date, see section 2(d) of Pub. L. 106−354, set out as an Effective Date of 2000 Amendment note under section 1396a of this title.

−SECREF−

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1396a, 1396b of this title.

−FOOTNOTE−

(!1) So in original. Probably should be "an".

−End−

−CITE−

42 USC Sec. 1396r−2 01/06/03

−EXPCITE−

TITLE 42 − THE PUBLIC HEALTH AND WELFARE

CHAPTER 7 − SOCIAL SECURITY

SUBCHAPTER XIX − GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

−HEAD−

Sec. 1396r−2. Information concerning sanctions taken by State

licensing authorities against health care practitioners and providers

−STATUTE−

(a) Information reporting requirement

The requirement referred to in section 1396a(a)(49) of this title is that the State must provide for the following:

(1) Information reporting system

The State must have in effect a system of reporting the following information with respect to formal proceedings (as defined by the Secretary in regulations) concluded against a health care practitioner or entity by any authority of the State (or of a political subdivision thereof) responsible for the licensing of health care practitioners (or any peer review organization or private accreditation entity reviewing the services provided by health care practitioners) or entities:

(A) Any adverse action taken by such licensing authority as a result of the proceeding, including any revocation or suspension of a license (and the length of any such suspension), reprimand, censure, or probation.

(B) Any dismissal or closure of the proceedings by reason of the practitioner or entity surrendering the license or leaving the State or jurisdiction.

(C) Any other loss of the license of the practitioner or entity, whether by operation of law, voluntary surrender, or otherwise.

(D) Any negative action or finding by such authority,

organization, or entity regarding the practitioner or entity.

(2) Access to documents

The State must provide the Secretary (or an entity designated by the Secretary) with access to such documents of the authority described in paragraph (1) as may be necessary for the Secretary to determine the facts and circumstances concerning the actions and determinations described in such paragraph for the purpose of carrying out this chapter.

(b) Form of information

The information described in subsection (a)(1) of this section shall be provided to the Secretary (or to an appropriate private or public agency, under suitable arrangements made by the Secretary with respect to receipt, storage, protection of confidentiality, and dissemination of information) in such a form and manner as the Secretary determines to be appropriate in order to provide for activities of the Secretary under this chapter and in order to provide, directly or through suitable arrangements made by the Secretary, information −

(1) to agencies administering Federal health care programs, including private entities administering such programs under contract,

(2) to licensing authorities described in subsection (a)(1) of this section,

(3) to State agencies administering or supervising the administration of State health care programs (as defined in section 1320a−7(h) of this title),

(4) to utilization and quality control peer review organizations described in part B of subchapter XI of this chapter and to appropriate entities with contracts under section 1320c−3(a)(4)(C) of this title with respect to eligible organizations reviewed under the contracts,

(5) to State medicaid fraud control units (as defined in section 1396b(q) of this title),

(6) to hospitals and other health care entities (as defined in section 431 of the Health Care Quality Improvement Act of 1986 [42 U.S.C. 11151]), with respect to physicians or other licensed health care practitioners that have entered (or may be entering) into an employment or affiliation relationship with, or have applied for clinical privileges or appointments to the medical staff of, such hospitals or other health care entities (and such information shall be deemed to be disclosed pursuant to section 427 [42 U.S.C. 11137] of, and be subject to the provisions of, that Act [42 U.S.C. 11101 et seq.]),

(7) to the Attorney General and such other law enforcement officials as the Secretary deems appropriate, and

(8) upon request, to the Comptroller General,

in order for such authorities to determine the fitness of individuals to provide health care services, to protect the health and safety of individuals receiving health care through such programs, and to protect the fiscal integrity of such programs.

(c) Confidentiality of information provided

The Secretary shall provide for suitable safeguards for the

confidentiality of the information furnished under subsection (a) of this section. Nothing in this subsection shall prevent the disclosure of such information by a party which is otherwise authorized, under applicable State law, to make such disclosure.

(d) Appropriate coordination

The Secretary shall provide for the maximum appropriate coordination in the implementation of subsection (a) of this section and section 422 of the Health Care Quality Improvement Act of 1986 [42 U.S.C. 11132].

−SOURCE−

(Aug. 14, 1935, ch. 531, title XIX, Sec. 1921, as added Pub. L. 100−93, Sec. 5(b), Aug. 18, 1987, 101 Stat. 690; amended Pub. L. 101−508, title IV, Sec. 4752(f)(1), Nov. 5, 1990, 104 Stat. 1388−208.)

−REFTEXT−

REFERENCES IN TEXT

Part B of subchapter XI of this chapter, referred to in subsec. (b)(4), is classified to section 1320c et seq. of this title.

That Act, referred to in subsec. (b)(6), is title IV of Pub. L. 99−660, Nov. 14, 1986, 100 Stat. 3784, as amended, known as the Health Care Quality Improvement Act of 1986, which is classified generally to chapter 117 (Sec. 11101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11101 of this title and Tables.

−MISC1−

PRIOR PROVISIONS

A prior section 1921 of act Aug. 14, 1935, was renumbered section 1928 and is classified to section 1396s of this title.

AMENDMENTS

1990 − Subsec. (a)(1). Pub. L. 101−508, Sec. 4752(f)(1)(A), inserted "(or any peer review organization or private accreditation entity reviewing the services provided by health care practitioners)" after "health care practitioners" in introductory provisions.

Subsec. (a)(1)(D). Pub. L. 101−508, Sec. 4752(f)(1)(B), added subpar. (D).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4752(f)(2) of Pub. L. 101−508 provided that: "The amendments made by paragraph (1) [amending this section] shall apply to State information reporting systems as of January 1, 1992, without regard to whether or not the Secretary of Health and Human Services has promulgated any regulations to carry out such amendments by such date."

EFFECTIVE DATE

Section applicable, with certain exceptions, to payments under subchapter XIX of this chapter for calendar quarters beginning more than thirty days after Aug. 18, 1987, without regard to whether or not final regulations to carry out this section have been published by that date, see section 15(c)(1), (2) of Pub. L. 100−93 set out as an Effective Date of 1987 Amendment note under section 1320a−7 of this title.

−SECREF−

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1396a of this title.

−End−

−CITE−

42 USC Sec. 1396r−3 01/06/03

−EXPCITE−

TITLE 42 − THE PUBLIC HEALTH AND WELFARE

CHAPTER 7 − SOCIAL SECURITY

SUBCHAPTER XIX − GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

−HEAD−

Sec. 1396r−3. Correction and reduction plans for intermediate care facilities for mentally retarded

−STATUTE−

(a) Written plans to remedy substantial deficiencies; time for submission

If the Secretary finds that an intermediate care facility for the mentally retarded has substantial deficiencies which do not pose an immediate threat to the health and safety of residents (including failure to provide active treatment), the State may elect, subject to the limitations in this section, to −

(1) submit, within the number of days specified by the Secretary in regulations which apply to submission of compliance plans with respect to deficiencies of such type, a written plan of correction which details the extent of the facility's current compliance with the standards promulgated by the Secretary, including all deficiencies identified during a validation survey,

and which provides for a timetable for completion of necessary steps to correct all staffing deficiencies within 6 months, and a timetable for rectifying all physical plant deficiencies within 6 months; or

(2) submit, within a time period consisting of the number of days specified for submissions under paragraph (1) plus 35 days, a written plan for permanently reducing the number of certified beds, within a maximum of 36 months, in order to permit any noncomplying buildings (or distinct parts thereof) to be vacated and any staffing deficiencies to be corrected (hereinafter in this section referred to as a "reduction plan").

(b) Conditions for approval of reduction plans

As conditions of approval of any reduction plan submitted pursuant to subsection (a)(2) of this section, the State must −

(1) provide for a hearing to be held at the affected facility at least 35 days prior to submission of the reduction plan, with reasonable notice thereof to the staff and residents of the facility, responsible members of the residents' families, and the general public;

(2) demonstrate that the State has successfully provided home and community services similar to the services proposed to be provided under the reduction plan for similar individuals eligible for medical assistance; and

(3) provide assurances that the requirements of subsection (c) of this section shall be met with respect to the reduction plan.

(c) Contents of reduction plan

The reduction plan must −

(1) identify the number and service needs of existing facility residents to be provided home or community services and the timetable for providing such services, in 6 month intervals, within the 36−month period;

(2) describe the methods to be used to select such residents for home and community services and to develop the alternative home and community services to meet their needs effectively;

(3) describe the necessary safeguards that will be applied to protect the health and welfare of the former residents of the facility who are to receive home or community services, including adequate standards for consumer and provider participation and assurances that applicable State licensure and applicable State and Federal certification requirements will be met in providing such home or community services;

(4) provide that residents of the affected facility who are eligible for medical assistance while in the facility shall, at their option, be placed in another setting (or another part of the affected facility) so as to retain their eligibility for medical assistance;

(5) specify the actions which will be taken to protect the health and safety of, and to provide active treatment for, the residents who remain in the affected facility while the reduction plan is in effect;

(6) provide that the ratio of qualified staff to residents at the affected facility (or the part thereof) which is subject to

the reduction plan will be the higher of −

(A) the ratio which the Secretary determines is necessary in order to assure the health and safety of the residents of such facility (or part thereof); or

(B) the ratio which was in effect at the time that the finding of substantial deficiencies (referred to in subsection (a) of this section) was made; and

(7) provide for the protection of the interests of employees affected by actions under the reduction plan, including −

(A) arrangements to preserve employee rights and benefits;

(B) training and retraining of such employees where necessary;

(C) redeployment of such employees to community settings under the reduction plan; and

(D) making maximum efforts to guarantee the employment of such employees (but this requirement shall not be construed to guarantee the employment of any employee).

(d) Notice and comment; approval of more than 15 reduction plans in any fiscal year; corrections costing $2,000,000 or more

(1) The Secretary must provide for a period of not less than 30 days after the submission of a reduction plan by a State, during which comments on such reduction plan may be submitted to the Secretary, before the Secretary approves or disapproves such reduction plan.

(2) If the Secretary approves more than 15 reduction plans under this section in any fiscal year, any reduction plans approved in

addition to the first 15 such plans approved, must be for a facility (or part thereof) for which the costs of correcting the substantial deficiencies (referred to in subsection (a) of this section) are $2,000,000 or greater (as demonstrated by the State to the satisfaction of the Secretary).

(e) Termination of provider agreements; disallowance of percentage amounts for purposes of Federal financial participation

(1) If the Secretary, at the conclusion of the 6−month plan of correction described in subsection (a)(1) of this section, determines that the State has substantially failed to correct the deficiencies described in subsection (a) of this section, the Secretary may terminate the facility's provider agreement in accordance with the provisions of section 1396i(b) of this title.

(2) In the case of a reduction plan described in subsection (a)(2) of this section, if the Secretary determines, at the conclusion of the initial 6−month period or any 6−month interval thereafter, that the State has substantially failed to meet the requirements of subsection (c) of this section, the Secretary shall

–

(A) terminate the facility's provider agreement in accordance with the provisions of section 1396i(b) of this title; or

(B) if the State has failed to meet such requirements despite good faith efforts, disallow, for purposes of Federal financial participation, an amount equal to 5 percent of the cost of care for all eligible individuals in the facility for each month for which the State fails to meet such requirements.

(f) Applicability of section limited to plans approved by January 1, 1990

The provisions of this section shall apply only to plans of correction and reduction plans approved by the Secretary by January 1, 1990.

−SOURCE−

(Aug. 14, 1935, ch. 531, title XIX, Sec. 1922, formerly Sec. 1919, as added Pub. L. 99−272, title IX, Sec. 9516(a), Apr. 7, 1986, 100 Stat. 213; renumbered Sec. 1922 and amended Pub. L. 100−203, title IV, Secs. 4211(a)(2), 4212(e)(5), Dec. 22, 1987, 101 Stat. 1330−182; amended Pub. L. 100−360, title IV, Sec. 411(l)(6)(E), July 1, 1988, 102 Stat. 804; Pub. L. 100−647, title VIII, Sec. 8433(a), Nov. 10, 1988, 102 Stat. 3804.)

−MISC1−

PRIOR PROVISIONS

A prior section 1922 of act Aug. 14, 1935, was renumbered section 1928 and is classified to section 1396s of this title.

AMENDMENTS

1988 − Subsec. (a). Pub. L. 100−647, Sec. 8433(a)(1), inserted "(including failure to provide active treatment)" after "residents" in introductory provisions.

Subsec. (c)(5). Pub. L. 100−647, Sec. 8433(a)(2), inserted ", and to provide active treatment for," after "safety of".

Subsec. (e)(1), (2)(A). Pub. L. 100−360, Sec. 411(l)(6)(E), substituted "1396i(b)" for "1396i(c)".

Subsec. (f). Pub. L. 100−647, Sec. 8433(a)(3), substituted "by

January 1, 1990" for "within 3 years after the effective date of final regulations implementing this section".

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 8433(b) of Pub. L. 100−647 provided that: "The amendments made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Nov. 10, 1988], and shall apply to any proceeding where there has not yet been a final determination by the Secretary (as defined for purposes of judicial review) as of the date of the enactment of this Act."

Except as specifically provided in section 411 of Pub. L. 100−360, amendment by Pub. L. 100−360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100−203, effective as if included in the enactment of that provision in Pub. L. 100−203, see section 411(a) of Pub. L. 100−360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE

Section 9516(b) of Pub. L. 99−272 provided that:

"(1) The amendment made by this section [enacting this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].

"(2) The Secretary of Health and Human Services shall issue a notice of proposed rulemaking with respect to section 1919 of the Social Security Act [this section] within 60 days after the date of the enactment of this Act, and shall allow a period of 30 days for comment thereon prior to promulgating final regulations

implementing such section."

REGULATIONS

Section 4217 of Pub. L. 100−203 provided that:

"(a) In General. − Not later than 30 days after the date of enactment of this Act [Dec. 22, 1987], the Secretary of Health and Human Services shall promulgate final regulations to implement the amendments made by section 9516 of the Consolidated Omnibus Budget Reconciliation Act of 1985 [enacting this section].

"(b) The regulations promulgated under paragraph (1) shall be effective as if promulgated on the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Apr. 7, 1986]."

REPORT TO CONGRESS ON IMPLEMENTATION AND RESULTS OF THIS SECTION

Section 9516(c) of Pub. L. 99−272, as amended by Pub. L. 100−203, title IV, Sec. 4211(l), Dec. 22, 1987, 101 Stat. 1330−207, directed Secretary of Health and Human Services to submit a report to Congress on implementation and results of this section, such report to be submitted not later than 30 months after the effective date of final regulations promulgated to implement this section.

−End−

−CITE−

42 USC Sec. 1396r−4 01/06/03

−EXPCITE−

TITLE 42 − THE PUBLIC HEALTH AND WELFARE

CHAPTER 7 − SOCIAL SECURITY

SUBCHAPTER XIX − GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

−HEAD−

Sec. 1396r−4. Adjustment in payment for inpatient hospital services furnished by disproportionate share hospitals

−STATUTE−

(a) Implementation of requirement

(1) A State plan under this subchapter shall not be considered to meet the requirement of section 1396a(a)(13)(A)(iv) of this title (insofar as it requires payments to hospitals to take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs), as of July 1, 1988, unless the State has submitted to the Secretary, by not later than such date, an amendment to such plan that −

(A) specifically defines the hospitals so described (and includes in such definition any disproportionate share hospital described in subsection (b)(1) of this section which meets the requirements of subsection (d) of this section), and

(B) provides, effective for inpatient hospital services provided not later than July 1, 1988, for an appropriate increase in the rate or amount of payment for such services provided by such hospitals, consistent with subsection (c) of this section.

(2)(A) In order to be considered to have met such requirement of section 1396a(a)(13)(A) of this title as of July 1, 1989, the State must submit to the Secretary by not later than April 1, 1989, the State plan amendment described in paragraph (1), consistent with subsection (c) of this section, effective for inpatient hospital services provided on or after July 1, 1989.

(B) In order to be considered to have met such requirement of section 1396a(a)(13)(A) of this title as of July 1, 1990, the State must submit to the Secretary by not later than April 1, 1990, the State plan amendment described in paragraph (1), consistent with subsections (c) and (f) of this section, effective for inpatient hospital services provided on or after July 1, 1990.

(C) If a State plan under this subchapter provides for payments for inpatient hospital services on a prospective basis (whether per diem, per case, or otherwise), in order for the plan to be considered to have met such requirement of section 1396a(a)(13)(A) of this title as of July 1, 1989, the State must submit to the Secretary by not later than April 1, 1989, a State plan amendment that provides, in the case of hospitals defined by the State as disproportionate share hospitals under paragraph (1)(A), for an outlier adjustment in payment amounts for medically necessary inpatient hospital services provided on or after July 1, 1989, involving exceptionally high costs or exceptionally long lengths of stay for individuals under one year of age.

(D) A State plan under this subchapter shall not be considered to meet the requirements of section 1396a(a)(13)(A)(iv) of this title (insofar as it requires payments to hospitals to take into account the situation of hospitals that serve a disproportionate number of low−income patients with special needs), as of October 1, 1998, unless the State has submitted to the Secretary by such date a description of the methodology used by the State to identify and to make payments to disproportionate share hospitals, including

children's hospitals, on the basis of the proportion of low−income and medicaid patients (including such patients who receive benefits through a managed care entity) served by such hospitals. The State shall provide an annual report to the Secretary describing the disproportionate share payments to each such disproportionate share hospital.

(3) The Secretary shall, not later than 90 days after the date a State submits an amendment under this subsection, review each such amendment for compliance with such requirement and by such date shall approve or disapprove each such amendment. If the Secretary disapproves such an amendment, the State shall immediately submit a revised amendment which meets such requirement.

(4) The requirement of this subsection may not be waived under section 1396n(b)(4) of this title.

(b) Hospitals deemed disproportionate share

(1) For purposes of subsection (a)(1) of this section, a hospital which meets the requirements of subsection (d) of this section is deemed to be a disproportionate share hospital if −

(A) the hospital's medicaid inpatient utilization rate (as defined in paragraph (2)) is at least one standard deviation above the mean medicaid inpatient utilization rate for hospitals receiving medicaid payments in the State; or

(B) the hospital's low−income utilization rate (as defined in paragraph (3)) exceeds 25 percent.

(2) For purposes of paragraph (1)(A), the term "medicaid inpatient utilization rate" means, for a hospital, a fraction

(expressed as a percentage), the numerator of which is the hospital's number of inpatient days attributable to patients who (for such days) were eligible for medical assistance under a State plan approved under this subchapter in a period (regardless of whether such patients receive medical assistance on a fee−for−service basis or through a managed care entity), and the denominator of which is the total number of the hospital's inpatient days in that period. In this paragraph, the term "inpatient day" includes each day in which an individual (including a newborn) is an inpatient in the hospital, whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere.

(3) For purposes of paragraph (1)(B), the term "low−income utilization rate" means, for a hospital, the sum of −

(A) the fraction (expressed as a percentage) −

(i) the numerator of which is the sum (for a period) of (I) the total revenues paid the hospital for patient services under a State plan under this subchapter (regardless of whether the services were furnished on a fee−for−service basis or through a managed care entity) and (II) the amount of the cash subsidies for patient services received directly from State and local governments, and

(ii) the denominator of which is the total amount of revenues of the hospital for patient services (including the amount of such cash subsidies) in the period; and

(B) a fraction (expressed as a percentage) −

(i) the numerator of which is the total amount of the hospital's charges for inpatient hospital services which are attributable to charity care in a period, less the portion of any cash subsidies described in clause (i)(II) of subparagraph (A) in the period reasonably attributable to inpatient hospital services, and

(ii) the denominator of which is the total amount of the hospital's charges for inpatient hospital services in the hospital in the period.

The numerator under subparagraph (B)(i) shall not include contractual allowances and discounts (other than for indigent patients not eligible for medical assistance under a State plan approved under this subchapter).

(4) The Secretary may not restrict a State's authority to designate hospitals as disproportionate share hospitals under this section. The previous sentence shall not be construed to affect the authority of the Secretary to reduce payments pursuant to section 1396b(w)(1)(A)(iii) of this title if the Secretary determines that, as a result of such designations, there is in effect a hold harmless provision described in section 1396b(w)(4) of this title.

(c) Payment adjustment

Subject to subsections (f) and (g) of this section, in order to be consistent with this subsection, a payment adjustment for a disproportionate share hospital must either −

(1) be in an amount equal to at least the product of (A) the

amount paid under the State plan to the hospital for operating costs for inpatient hospital services (of the kind described in section 1395ww(a)(4) of this title), and (B) the hospital's disproportionate share adjustment percentage (established under section 1395ww(d)(5)(F)(iv) of this title);

(2) provide for a minimum specified additional payment amount (or increased percentage payment) and (without regard to whether the hospital is described in subparagraph (A) or (B) of subsection (b)(1) of this section) for an increase in such a payment amount (or percentage payment) in proportion to the percentage by which the hospital's medicaid utilization rate (as defined in subsection (b)(2) of this section) exceeds one standard deviation above the mean medicaid inpatient utilization rate for hospitals receiving medicaid payments in the State or the hospital's low−income utilization rate (as defined in paragraph (!1) (b)(3) of this section); or

(3) provide for a minimum specified additional payment amount (or increased percentage payment) that varies according to type of hospital under a methodology that −

(A) applies equally to all hospitals of each type; and

(B) results in an adjustment for each type of hospital that is reasonably related to the costs, volume, or proportion of services provided to patients eligible for medical assistance under a State plan approved under this subchapter or to low−income patients,

except that, for purposes of paragraphs (1)(B) and (2)(A) of

subsection (a) of this section, the payment adjustment for a disproportionate share hospital is consistent with this subsection if the appropriate increase in the rate or amount of payment is equal to at least one−third of the increase otherwise applicable under this subsection (in the case of such paragraph (1)(B)) and at least two−thirds of such increase (in the case of paragraph (2)(A)). In the case of a hospital described in subsection (d)(2)(A)(i) of this section (relating to children's hospitals), in computing the hospital's disproportionate share adjustment percentage for purposes of paragraph (1)(B) of this subsection, the disproportionate patient percentage (defined in section 1395ww(d)(5)(F)(vi) of this title) shall be computed by substituting for the fraction described in subclause (I) of such section the fraction described in subclause (II) of that section.

If a State elects in a State plan amendment under subsection (a) of this section to provide the payment adjustment described in paragraph (2), the State must include in the amendment a detailed description of the specific methodology to be used in determining the specified additional payment amount (or increased percentage payment) to be made to each hospital qualifying for such a payment adjustment and must publish at least annually the name of each hospital qualifying for such a payment adjustment and the amount of such payment adjustment made for each such hospital.

(d) Requirements to qualify as disproportionate share hospital

(1) Except as provided in paragraph (2), no hospital may be defined or deemed as a disproportionate share hospital under a

State plan under this subchapter or under subsection (b) of this section unless the hospital has at least 2 obstetricians who have staff privileges at the hospital and who have agreed to provide obstetric services to individuals who are entitled to medical assistance for such services under such State plan.

(2)(A) Paragraph (1) shall not apply to a hospital −

(i) the inpatients of which are predominantly individuals under 18 years of age; or

(ii) which does not offer nonemergency obstetric services to the general population as of December 22, 1987.

(B) In the case of a hospital located in a rural area (as defined for purposes of section 1395ww of this title), in paragraph (1) the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

(3) No hospital may be defined or deemed as a disproportionate share hospital under a State plan under this subchapter or under subsection (b) or (e) of this section unless the hospital has a medicaid inpatient utilization rate (as defined in subsection (b)(2) of this section) of not less than 1 percent.

(e) Special rule

(1) A State plan shall be considered to meet the requirement of section 1396a(a)(13)(A)(iv) of this title (insofar as it requires payments to hospitals to take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs) without regard to the requirement of subsection (a) of this section if (A)(i) the plan provided for

payment adjustments based on a pooling arrangement involving a majority of the hospitals participating under the plan for disproportionate share hospitals as of January 1, 1984, or (ii) the plan as of January 1, 1987, provided for payment adjustments based on a statewide pooling arrangement involving all acute care hospitals and the arrangement provides for reimbursement of the total amount of uncompensated care provided by each participating hospital, (B) the aggregate amount of the payment adjustments under the plan for such hospitals is not less than the aggregate amount of such adjustments otherwise required to be made under such subsection, and (C) the plan meets the requirement of subsection (d)(3) of this section and such payment adjustments are made consistent with the last sentence of subsection (c) of this section.

(2) In the case of a State that used a health insuring organization before January 1, 1986, to administer a portion of its plan on a statewide basis, beginning on July 1, 1988 −

(A) the requirements of subsections (b) and (c) of this section (other than the last sentence of subsection (c) of this section) shall not apply if the aggregate amount of the payment adjustments under the plan for disproportionate share hospitals (as defined under the State plan) is not less than the aggregate amount of payment adjustments otherwise required to be made if such subsections applied,

(B) subsection (d)(2)(B) of this section shall apply to hospitals located in urban areas, as well as in rural areas,

(C) subsection (d)(3) of this section shall apply, and

(D) subsection (g) of this section shall apply.

(f) Limitation on Federal financial participation

(1) In general

Payment under section 1396b(a) of this title shall not be made to a State with respect to any payment adjustment made under this section for hospitals in a State for quarters in a fiscal year in excess of the disproportionate share hospital (in this subsection referred to as "DSH") allotment for the State for the fiscal year, as specified in paragraphs (2) and (3).

(2) State DSH allotments for fiscal years 1998 through 2002

Subject to paragraph (4), the DSH allotment for a State for each fiscal year during the period beginning with fiscal year 1998 and ending with fiscal year 2002 is determined in accordance with the following table:

State or District DSH Allotment (in millions of dollars)

	FY 98	FY 99	FY 00	FY 01	FY 02
Alabama	293	269	248	246	246
Alaska	10	10	10	9	9
Arizona	81	81	81	81	81
Arkansas	2	2	2	2	2
California	1,085	1,068	986	931	877
Colorado	93	85	79	74	74
Connecticut	200	194	164	160	160
Delaware	4	4	4	4	4

District of Columbia 23 23 32 32 32

Florida 207 203 197 188 160

Georgia 253 248 241 228 215

Hawaii 0 0 0 0 0

Idaho 1 1 1 1 1

Illinois 203 199 193 182 172

Indiana 201 197 191 181 171

Iowa 8 8 8 8 8

Kansas 51 49 42 36 33

Kentucky 137 134 130 123 116

Louisiana 880 795 713 658 631

Maine 103 99 84 84 84

Maryland 72 70 68 64 61

Massachusetts 288 282 273 259 244

Michigan 249 244 237 224 212

Minnesota 16 16 33 33 33

Mississippi 143 141 136 129 122

Missouri 436 423 379 379 379

Montana 0.2 0.2 0.2 0.2 0.2

Nebraska 5 5 5 5 5

Nevada 37 37 37 37 37

New Hampshire 140 136 130 130 130

New Jersey 600 582 515 515 515

New Mexico 5 5 9 9 9

New York 1,512 1,482 1,436 1,361 1,285

North Carolina 278 272 264 250 236

North Dakota 1 1 1 1 1

Ohio 382 374 363 344 325

Oklahoma 16 16 16 16 16

Oregon 20 20 20 20 20

Pennsylvania 529 518 502 476 449

Rhode Island 62 60 58 55 52

South Carolina 313 303 262 262 262

South Dakota 1 1 1 1 1

Tennessee 0 0 0 0 0

Texas 979 950 806 765 765

Utah 3 3 3 3 3

Vermont 18 18 18 18 18

Virginia 70 68 66 63 59

Washington 174 171 166 157 148

West Virginia 64 63 61 58 54

Wisconsin 7 7 7 7 7

Wyoming 0 0 0.1 0.1 0.1.

_____

(3) State DSH allotments for fiscal year 2003 and thereafter

(A) In general

The DSH allotment for any State for fiscal year 2003 and each succeeding fiscal year is equal to the DSH allotment for the State for the preceding fiscal year under paragraph (2) or this paragraph, increased, subject to subparagraph (B) and paragraph (5) by the percentage change in the consumer price index for all urban consumers (all items; U.S. city average), for the

previous fiscal year.

(B) Limitation

The DSH allotment for a State shall not be increased under subparagraph (A) for a fiscal year to the extent that such an increase would result in the DSH allotment for the year exceeding the greater of −

(i) the DSH allotment for the previous year, or

(ii) 12 percent of the total amount of expenditures under the State plan for medical assistance during the fiscal year.

(4) Special rule for fiscal years 2001 and 2002

(A) In general

Notwithstanding paragraph (2), the DSH allotment for any State for −

(i) fiscal year 2001, shall be the DSH allotment determined under paragraph (2) for fiscal year 2000 increased, subject to subparagraph (B) and paragraph (5), by the percentage change in the consumer price index for all urban consumers (all items; U.S. city average) for fiscal year 2000; and

(ii) fiscal year 2002, shall be the DSH allotment determined under clause (i) increased, subject to subparagraph (B) and paragraph (5), by the percentage change in the consumer price index for all urban consumers (all items; U.S. city average) for fiscal year 2001.

(B) Limitation

Subparagraph (B) of paragraph (3) shall apply to subparagraph (A) of this paragraph in the same manner as that subparagraph

(B) applies to paragraph (3)(A).

(C) No application to allotments after fiscal year 2002

The DSH allotment for any State for fiscal year 2003 or any succeeding fiscal year shall be determined under paragraph (3) without regard to the DSH allotments determined under subparagraph (A) of this paragraph.

(5) Special rule for extremely low DSH States

In the case of a State in which the total expenditures under the State plan (including Federal and State shares) for disproportionate share hospital adjustments under this section for fiscal year 1999, as reported to the Administrator of the Health Care Financing Administration as of August 31, 2000, is greater than 0 but less than 1 percent of the State's total amount of expenditures under the State plan for medical assistance during the fiscal year, the DSH allotment for fiscal year 2001 shall be increased to 1 percent of the State's total amount of expenditures under such plan for such assistance during such fiscal year. In subsequent fiscal years, such increased allotment is subject to an increase for inflation as provided in paragraph (3)(A).

(6) "State" defined

In this subsection, the term "State" means the 50 States and the District of Columbia.

(g) Limit on amount of payment to hospital

(1) Amount of adjustment subject to uncompensated costs

(A) In general

A payment adjustment during a fiscal year shall not be considered to be consistent with subsection (c) of this section with respect to a hospital if the payment adjustment exceeds the costs incurred during the year of furnishing hospital services (as determined by the Secretary and net of payments under this subchapter, other than under this section, and by uninsured patients) by the hospital to individuals who either are eligible for medical assistance under the State plan or have no health insurance (or other source of third party coverage) for services provided during the year. For purposes of the preceding sentence, payments made to a hospital for services provided to indigent patients made by a State or a unit of local government within a State shall not be considered to be a source of third party payment.

(B) Limit to public hospitals during transition period

With respect to payment adjustments during a State fiscal year that begins before January 1, 1995, subparagraph (A) shall apply only to hospitals owned or operated by a State (or by an instrumentality or a unit of government within a State).

(C) Modifications for private hospitals

With respect to hospitals that are not owned or operated by a State (or by an instrumentality or a unit of government within a State), the Secretary may make such modifications to the manner in which the limitation on payment adjustments is applied to such hospitals as the Secretary considers appropriate.

(2) Additional amount during transition period for certain hospitals with high disproportionate share

(A) In general

In the case of a hospital with high disproportionate share (as defined in subparagraph (B)), a payment adjustment during a State fiscal year that begins before January 1, 1995, shall be considered consistent with subsection (c) of this section if the payment adjustment does not exceed 200 percent of the costs of furnishing hospital services described in paragraph (1)(A) during the year, but only if the Governor of the State certifies to the satisfaction of the Secretary that the hospital's applicable minimum amount is used for health services during the year. In determining the amount that is used for such services during a year, there shall be excluded any amounts received under the Public Health Service Act [42 U.S.C. 201 et seq.], subchapter V of this chapter, subchapter XVIII of this chapter, or from third party payors (not including the State plan under this subchapter) that are used for providing such services during the year.

(B) "Hospital with high disproportionate share" defined

In subparagraph (A), a hospital is a "hospital with high disproportionate share" if −

(i) the hospital is owned or operated by a State (or by an instrumentality or a unit of government within a State); and

(ii) the hospital −

(I) meets the requirement described in subsection

(b)(1)(A) of this section, or

(II) has the largest number of inpatient days attributable to individuals entitled to benefits under the State plan of any hospital in such State for the previous State fiscal year.

(C) "Applicable minimum amount" defined

In subparagraph (A), the "applicable minimum amount" for a hospital for a fiscal year is equal to the difference between the amount of the hospital's payment adjustment for the fiscal year and the costs to the hospital of furnishing hospital services described in paragraph (1)(A) during the fiscal year.

(h) Limitation on certain State DSH expenditures

(1) In general

Payment under section 1396b(a) of this title shall not be made to a State with respect to any payment adjustments made under this section for quarters in a fiscal year (beginning with fiscal year 1998) to institutions for mental diseases or other mental health facilities, to the extent the aggregate of such adjustments in the fiscal year exceeds the lesser of the following:

(A) 1995 IMD DSH payment adjustments

The total State DSH expenditures that are attributable to fiscal year 1995 for payments to institutions for mental diseases and other mental health facilities (based on reporting data specified by the State on HCFA Form 64 as mental health DSH, and as approved by the Secretary).

(B) Applicable percentage of 1995 total DSH payment allotment

The amount of such payment adjustments which are equal to the applicable percentage of the Federal share of payment adjustments made to hospitals in the State under subsection (c) of this section that are attributable to the 1995 DSH allotment for the State for payments to institutions for mental diseases and other mental health facilities (based on reporting data specified by the State on HCFA Form 64 as mental health DSH, and as approved by the Secretary).

(2) Applicable percentage

(A) In general

For purposes of paragraph (1), the applicable percentage with respect to −

(i) each of fiscal years 1998, 1999, and 2000, is the percentage determined under subparagraph (B); or

(ii) a succeeding fiscal year is the lesser of the percentage determined under subparagraph (B) or the following percentage:

(I) For fiscal year 2001, 50 percent.

(II) For fiscal year 2002, 40 percent.

(III) For each succeeding fiscal year, 33 percent.

(B) 1995 percentage

The percentage determined under this subparagraph is the ratio (determined as a percentage) of −

(i) the Federal share of payment adjustments made to hospitals in the State under subsection (c) of this section

that are attributable to the 1995 DSH allotment for the State (as reported by the State not later than January 1, 1997, on HCFA Form 64, and as approved by the Secretary) for payments to institutions for mental diseases and other mental health facilities, to

(ii) the State 1995 DSH spending amount.

(C) State 1995 DSH spending amount

For purposes of subparagraph (B)(ii), the "State 1995 DSH spending amount", with respect to a State, is the Federal medical assistance percentage (for fiscal year 1995) of the payment adjustments made under subsection (c) of this section under the State plan that are attributable to the fiscal year 1995 DSH allotment for the State (as reported by the State not later than January 1, 1997, on HCFA Form 64, and as approved by the Secretary).

(i) Requirement for direct payment

(1) In general

No payment may be made under section 1396b(a)(1) of this title with respect to a payment adjustment made under this section, for services furnished by a hospital on or after October 1, 1997, with respect to individuals eligible for medical assistance under the State plan who are enrolled with a managed care entity (as defined in section 1396u−2(a)(1)(B) of this title) or under any other managed care arrangement unless a payment, equal to the amount of the payment adjustment −

(A) is made directly to the hospital by the State; and

(B) is not used to determine the amount of a prepaid capitation payment under the State plan to the entity or arrangement with respect to such individuals.

(2) Exception for current arrangements

Paragraph (1) shall not apply to a payment adjustment provided pursuant to a payment arrangement in effect on July 1, 1997.

−SOURCE−

(Aug. 14, 1935, ch. 531, title XIX, Sec. 1923, formerly Pub. L. 100−203, title IV, Sec. 4112, Dec. 22, 1987, 101 Stat. 1330−148; renumbered Sec. 1923 of act Aug. 14, 1935, and amended Pub. L. 100−360, title III, Sec. 302(b)(2), title IV, Sec. 411(k)(6)(A)−(B)(ix), July 1, 1988, 102 Stat. 752, 792−794; Pub. L. 100−485, title VI, Sec. 608(d)(15)(C), (26)(A)−(F), Oct. 13, 1988, 102 Stat. 2417, 2421, 2422; Pub. L. 101−239, title VI, Sec. 6411(c)(1), Dec. 19, 1989, 103 Stat. 2270; Pub. L. 101−508, title IV, Secs. 4702(a), 4703(a)−(c), Nov. 5, 1990, 104 Stat. 1388−171; Pub. L. 102−234, Secs. 3(b)(1), (2)(A), (c), Dec. 12, 1991, 105 Stat. 1799, 1802, 1803; Pub. L. 103−66, title XIII, Sec. 13621(a)(1), (b)(1), (2), Aug. 10, 1993, 107 Stat. 629−631; Pub. L. 105−33, title IV, Secs. 4711(c)(2), 4721(a)(1), (b)−(d), Aug. 5, 1997, 111 Stat. 508, 511, 513, 514; Pub. L. 106−113, div. B, Sec. 1000(a)(6) [title VI, Secs. 601(a), 608(s)], Nov. 29, 1999, 113 Stat. 1536, 1501A−394, 1501A−397; Pub. L. 106−554, Sec. 1(a)(6) [title VII, Sec. 701(a)(1), (2), (b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A−569, 2763A−570.)