300m-2, 300m-3, 300aa-6, 300aa-12, 300aa-14, 9412, and 9511 of this title, repealing sections 247b-1, 247b-2, 255, 300d to 300d-3, 300d-5, 300d-7 to 300d-9, 300d-21, 2689 to 2689*l*, 2689n to 2689p, 2689r to 2689aa, 9411, 9421 to 9423, 9431 to 9438, 9451, 9452, 9461 to 9465, 9471 to 9473, 9481, 9491 to 9493, 9502, 9512, 9521, and 9523 of this title, repealing provisions set out as notes under sections 246 and 2689 of this title, and transfering section 2689m to section 229d [300aa-14] of this title] shall take effect October 1, 1981."

EFFECTIVE DATE OF 1978 AMENDMENT

Section 110(c) of Pub. L. 95-622 provided in part that the amendment of this section by Pub. L. 95-622 is effective July 29, 1975.

EFFECTIVE DATE

Section effective July 1, 1975, see section 608 of Pub. L. 94-63, set out as an Effective Date of 1975 Amendment note under section 247b of this title.

OTHER LEGAL RIGHTS OF UNITED STATES NOT ADVERSELY AFFECTED BY 1985 AMENDMENT

Section 226(c) of Pub. L. 99-129 provided that: "The amendments made by subsection (a) of this section [amending this section] shall not adversely affect other legal rights of the United States."

§ 300cc-15. Use of fiscal agents

(a) Contracting authority

The Secretary may enter into contracts with fiscal agents—

(1)(A) to determine the amounts payable to persons who, on behalf of the Indian Health Service, furnish health services to eligible Indians,

(B) to determine the amounts payable to persons who, on behalf of the Public Health Service, furnish health services to individuals pursuant to section 247d or 249 of this title,

(2) to receive, disburse, and account for funds in making payments described in paragraph (1),

(3) to make such audits of records as may be necessary to assure that these payments are proper, and

(4) to perform such additional functions as may be necessary to carry out the functions described in paragraphs (1) through (3).

(b) Contracting prerequisites

(1) Contracts under subsection (a) of this section may be entered into without regard to section 5 of title 41 or any other provision of law requiring competition.

(2) No such contract shall be entered into with an entity unless the Secretary finds that the entity will perform its obligations under the contract efficiently and effectively and will meet such requirements as to financial responsibility, legal authority, and other matters as he finds pertinent.

(c) Advances under contracts

A contract under subsection (a) of this section may provide for advances of funds to enable entities to make payments under the contract.

(d) Applicable statutory provisions

Subsections (d) and (e) of section 1395u of this title shall apply to contracts with entities under subsection (a) of this section in the same manner as they apply to contracts with carriers under that section.

(e) "Fiscal agent" defined

In this section, the term "fiscal agent" means a carrier described in section 1395u(f)(1) of this title and includes, with respect to contracts under subsection (a)(1)(A) of this section, an Indian tribe or tribal organization acting under contract with the Secretary under the Indian Self-Determination Act (Public Law 93-638) [25 U.S.C. 450f et seq.].

(July 1, 1944, ch. 373, title XXIII, § 2316, formerly title XXI, § 2116, as added Apr. 7, 1986, Pub. L. 99-272, title XVII, § 17003, 100 Stat. 359, and renumbered title XXIII, § 2316, Nov. 14, 1986, Pub. L. 99-660, title III, § 311(a), 100 Stat. 3755.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (e), is title I of Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to subchapter II (§ 450f et seq.) 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.

CODIFICATION

Section was classified to section 300aa-15 of this title prior to its renumbering by Pub. L. 99-660.

CHAPTER 7—SOCIAL SECURITY

SUBCHAPTER IV—GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES

PART A—AID TO FAMILIES WITH DEPENDENT CHILDREN

Sec.
611. Repealed.

PART D—CHILD SUPPORT AND ESTABLISHMENT OF PATERNITY

666. Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement.
(a) Types of procedures required.
(b) Withholding from income of amounts payable as support.
(c) Administration of support payments through State agency or other entity.
(d) Exemption of States.
(e) "Overdue support" defined.
667. State guidelines for child support awards.
(a) Establishment of guidelines; method.
(b) Availability of guidelines; binding nature.
(c) Technical assistance to States; State to furnish Secretary with copies.

PART E—FEDERAL PAYMENTS FOR FOSTER CARE AND ADOPTION ASSISTANCE

677. Independent living initiatives.
(a) Payments for fiscal years 1987 and 1988; purpose; entitlement of States.
(b) Administration or supervision of programs by State agency; payments to State to conduct and provide activities and services.

Sec.
(c) Description of program; assurances of effective and efficient operation of program and of compliance; time for submission to Secretary.
(d) Objective of programs; programs to help participating individuals live independently upon leaving foster care; types of programs.
(e) Formula for determination of State entitlement for fiscal years 1987 and 1988 for transitional independent living programs; reallocation of amounts to other States; amounts in addition to amounts under other law.
(f) Payments; restrictions; estimation and adjustment; time of expenditure.
(g) Report by States to Secretary; evaluation by Secretary and report to Congress.
(h) Payments and services not considered income or resources in determining eligibility for aid and services to needy families with children or for foster care and adoption assistance.
(i) Promulgation of regulations.
678. Exclusion from AFDC unit of child for whom foster care maintenance payments are made.
679. Collection of data relating to adoption and foster care.
(a) Advisory Committee on Adoption and Foster Care Information.
(b) Report to Congress; regulations.
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910. Recommendations by Board of Trustees to remedy inadequate balances in the Social Security trust funds.
(a) Terms and conditions of recommendations.
(b) "Balance ratio" defined.
911. Budgetary treatment of trust fund operations.
(a) Federal Old-Age and Survivors Insurance Trust Fund; Federal Disability Insurance Trust Fund.
(b) Federal Hospital Insurance Trust Fund; Federal Supplementary Medical Insurance Trust Fund.
(c) Payments between general fund of Treasury and trust funds prohibited.

SUBCHAPTER XI—GENERAL PROVISIONS AND PEER REVIEW

PART A—GENERAL PROVISIONS

1317. Appointment of Administrator of Health Care Financing Administration.
1320b-6. Pilot projects to demonstrate the use of integrated service delivery systems for human services programs.
Sec.
(a) Establishment of pilot projects by States.
(b) Integration of service delivery systems for human services programs.
(c) Procedures for State establishment of pilot projects.
(d) Requests by States for waiver of requirements.
(e) Payments to States by Secretary.
(f) "Human services program" defined; consultation by Secretary with other department heads.
(g) Reports by States.
(h) Report to Congress by Secretary.
(i) Study of program by Comptroller General.
(j) Authorization of appropriations.
1320b-7. Income and eligibility verification system.
(a) Requirements of State eligibility systems.
(b) Applicable programs.
(c) Protection of applicants from improper use of information.
(d) Citizenship or immigration status requirements; documentation; verification by Immigration and Naturalization Service; denial of benefits; hearing.
(e) Erroneous State citizenship or immigration status determinations; penalties not required.
1320b-8. Hospital protocols for organ procurement and standards for organ procurement agencies.

PART B—PEER REVIEW OF THE UTILIZATION AND QUALITY OF HEALTH CARE SERVICES

1320c-13. 100 percent peer review for certain surgical procedures.
(a) 100 percent review function.
(b) Specification of surgical procedures and qualified reviewers.
(c) Requiring a second opinion in certain cases.
(d) Referral mechanism for second opinions.
(e) Notice to physicians, hospitals, and beneficiaries.

SUBCHAPTER XIII—RECONVERSION UNEMPLOYMENT BENEFITS FOR SEAMEN

1331 to 1336. Repealed.

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1395w-1. Physician Payment Review Commission.
(a) Establishment; membership; term of office.
(b) Recommendations to Congress.
(c) Applicability of provisions relating to Prospective Payment Assessment Commission; collection and assessment of information.

Sec.
(d) Authorization of appropriations.
(e) Relative value scale for physicians' services.

PART C—MISCELLANEOUS PROVISIONS

1395dd. Examination and treatment for emergency medical conditions and women in active labor.
(a) Medical screening requirement.
(b) Necessary stabilizing treatment for emergency medical conditions and active labor.
(c) Restricting transfers until patient stabilized.
(d) Enforcement.
(e) Definitions.
(f) Preemption.
1395ee. Repealed.
1395yy. Payment to skilled nursing facilities for routine service costs.
(a) Per diem limitations.
(b) Exception to limitations for hospital-based skilled nursing facility.
(c) Adjustments in limitations; publication of data.
(d) Access to skilled nursing facilities.
1395zz. Purchase of durable medical equipment.
(a) Lease-purchase basis or rental; determination by Secretary.
(b) Waiver of coinsurance amount in purchase of used equipment.
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1396q. Application of provisions of subchapter II relating to subpoenas.
1396r. Correction and reduction plans for intermediate care facilities for mentally retarded.
(a) Written plans to remedy substantial deficiencies; time for submission.
(b) Conditions for approval of reduction plans.
(c) Contents of reduction plan.
(d) Notice and comment; approval of more than 15 reduction plans in any fiscal year; corrections costing $2,000,000 or more.
(e) Termination of provider agreements; disallowance of percentage amounts for purpcses of Federal financial participation.
(f) Applicability of section limited to plans approved within three years after effective date of implementing regulations.
1396r-1. Presumptive eligibility for pregnant women.
(a) Ambulatory prenatal care.
(b) Definitions.
(c) Duties of State agency, qualified providers, and presumptively eligible pregnant women.
(d) Ambulatory prenatal care as medical assistance.
1396s. References to laws directly affecting medicaid program.
(a) Authority or requirements to cover additional individuals.
(b) Additional State plan requirements.

SUBCHAPTER XX—BLOCK GRANTS TO STATES FOR SOCIAL SERVICES

1397f. Repealed.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 242c, 907a, 1437f, 4636 of this title; title 2 section 651; title 5 sections 8403, 8442; title 7 section 2012; title 8 section 1324a; title 20 section 1013; title 22 section 4071i; title 25 sections 13d, 459e, 609c-1, 639, 640d-21, 1264, 1407, 1408, 2307, 3304; title 26 sections 86, 162, 401, 412, 415, 1402, 6103; title 29 sections 1082, 1552; title 31 sections 1516, 3701; title 40 App. section 202; title 45 sections 231, 231a, 231b, 231c, 231d, 231e, 231f, 231q, 231r, 231u; title 50 App. section 1291.

SUBCHAPTER I—GRANTS TO STATES FOR OLD-AGE ASSISTANCE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 428, 602, 671, 1301, 1306a, 1308, 1309, 1311, 1315, 1316, 1318, 1319, 1320b-2, 1320b-3, 1320b-7, 1382, 1395v, 1395z, 1396a, 1396b, 1396d of this title; title 7 sections 2012, 2014; title 8 section 1255a; title 26 section 6103.

§ 302. State old-age plans

(a) Contents

A State plan for old-age assistance must—

[*See main edition for text of (1) to (9)*]

(10) if the State plan includes old-age assistance—

[*See main edition for text of (A) and (B)*]

(C) provide a description of the services (if any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for and recipients of such assistance to help them attain self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services; and

(11) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b-7 of this title.

[*See main edition for text of (b) and (c)*]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2651(e), 98 Stat. 1149.)

AMENDMENTS

1984—Subsec. (a)(11). Pub. L. 98-369 added par. (11).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(*l*)(2) of

Pub. L. 98-369, set out as an Effective Date note under section 1320b-7 of this title.

§ 303. Payments to States and certain territories; computation of amount; eligibility of State to receive payment

(a) Computation of amounts

From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has a plan approved under this subchapter, for each quarter, beginning with the quarter commencing October 1, 1960—

[*See main edition for text of (1) to (3)*]

(4) in the case of any State, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health and Human Services for the proper and efficient administration of the State plan—

[*See main edition for text of (A)*]

(B) 100 percent of so much of such expenditures as are for the costs of the implementation and operation of the immigration status verification system described in section 1320b-7(d) of this title; plus

(C) one-half of the remainder of such expenditures.

[*See main edition for text of (b)*]

(As amended Nov. 6, 1986, Pub. L. 99-603, title I, § 121(b)(4), 100 Stat. 3391.)

AMENDMENTS

1986—Subsec. (a)(4)(B), (C). Pub. L. 99-603 added subpar. (B) and redesignated former subpar. (B) as (C).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 99-603 effective Oct. 1, 1987, see section 121(c)(2) of Pub. L. 99-603, set out as a note under section 502 of this title.

SUBCHAPTER II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 602, 662, 907, 907a, 909, 1320a-6, 1320b-1, 1320b-7, 1382, 1382b, 1382c, 1382f, 1383, 1383b, 1383c, 1395c, 1395u, 1395v, 1395gg, 1395ii, 1395oo, 1396a, 1398q, 5055, 11201, 11291 of this title; title 2 sections 641, 905; title 5 sections 8116, 8141, 8311, 8349, 8401, 6421, 8442, 8443; title 7 sections 2012, 2014; title 10 section 1451; title 12 section 3413; title 14 section 707; title 22 sections 3310, 4045, 4048, 4071b; title 26 sections 22, 86, 401, 404, 411, 416, 1402, 2032A, 3121, 6402; title 29 sections 206, 762a, 1026, 1054, 1056, 1706; title 30 sections 922, 923; title 31 sections 3720A, 3803, 3806; title 38 sections 412, 415, 3005, 3112; title 45 sections 231b, 231c, 231d, 231e, 231f, 231i, 231n, 231r, 354; title 49 App. section 1607a; title 50 App. section 36.

§ 401. Trust Funds

(a) Federal Old-Age and Survivors Insurance Trust Fund

There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Old-Age and Survivors Insurance Trust Fund". The Federal Old-Age and Survivors Insurance Trust Fund shall consist of the securities held by the Secretary of the Treasury for the Old-Age Reserve Account and the amount standing to the credit of the Old-Age Reserve Account on the books of the Treasury on January 1, 1940, which securities and amount the Secretary of the Treasury is authorized and directed to transfer to the Federal Old-Age and Survivors Insurance Trust Fund, and, in addition, such gifts and bequests as may be made as provided in subsection (i)(1) of this section, and such amounts as may be appropriated to, or deposited in, the Federal Old-Age and Survivors Insurance Trnst Fund as hereinafter provided. There is hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for the fiscal year ending June 30, 1941, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

[*See main edition for text of (1) and (2)*]

(3) the taxes imposed by subchapter A of chapter 9 of the Internal Revenue Code of 1939 with respect to wages (as defined in section 1426 of such Code), and by chapter 21 (other than sections 3101(b) and 3111(b)) of the Internal Revenue Code of 1986 with respect to wages (as defined in section 3121 of such Code) reported to the Commissioner of Internal Revenue pursuant to section 1420(c) of the Internal Revenue Code of 1939 after December 31, 1950, or to the Secretary of the Treasury or his delegates pursuant to subtitle F of the Internal Revenue Code of 1986 after December 31, 1954, as determined by the Secretary of the Treasury by applying the applicable rates of tax under such subchapter or chapter 21 (other than sections 3101(b) and 3111(b)) to such wages, which wages shall be certified by the Secretary of Health and Human Services on the basis of the records of wages established and maintained by such Secretary in accordance with such reports, less the amounts specified in clause (1) of subsection (b) of this section; and

(4) the taxes imposed by subchapter E of chapter 1 of the Internal Revenue Code of 1939, with respect to self-employment income (as defined in section 481 of such Code), and by chapter 2 (other than section 1401(b)) of the Internal Revenue Code of 1986 with respect to self-employment income (as defined in section 1402 of such Code) reported to the Commissioner of Internal Revenue on tax returns under such subchapter or to the Secretary of the Treasury or his delegate on tax returns under subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such subchapter or chapter (other than section 1401(b)) to such self-employment income, which self-employment income shall be certified by the Secretary of Health and Human Services on the basis of the records of self-employment income established and maintained by the Secretary of Health and

Human Services in accordance with such returns, less the amounts specified in clause (2) of subsection (b) of this section.

The amounts appropriated by clauses (3) and (4) of this subsection shall be transferred monthly on the first day of each calendar month from the general fund in the Treasury to the Federal Old-Age and Survivors Insurance Trust Fund, and the amounts appropriated by clauses (1) and (2) of subsection (b) of this section shall be transferred monthly on the first day of each calendar month from the general fund in the Treasury to the Federal Disability Insurance Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in clauses (3) and (4) of this subsection, to be paid to or deposited into the Treasury during such month; and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the taxes specified in such clauses (3) and (4) of this subsection. All amounts transferred to either Trust Fund under the preceding sentence shall be invested by the Managing Trustee in the same manner and to the same extent as the other assets of such Trust Fund; and such Trust Fund shall pay interest to the general fund on the amount so transferred on the first day of any month at a rate (calculated on a daily basis, and applied against the difference between the amount so transferred on such first day and the amount which would have been transferred to the Trust Fund up to that day under the procedures in effect on January I, 1983) equal to the rate earned by the investments of such Fund in the same month under subsection (d) of this section.

(b) Federal Disability Insurance Trust Fund

There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Disability Insurance Trust Fund". The Federal Disability Insurance Trust Fund shall consist of such gifts and bequests as may be made as provided in subsection (i)(I) of this section, and such amounts as may be appropriated to, or deposited in, such fund as provided in this section. There is hereby appropriated to the Federal Disability Insurance Trust Fund for the fiscal year ending June 30, I957, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1)(A) ¼ of 1 per centum of the wages (as defined in section 3I21 of the Internal Revenue Code of 1986) paid after December 31, 1956, and before January 1, 1966, and reported to the Secretary of the Treasury or his delegato pursuant to subtitle F of the Internal Revenue Code of 1986, (B) 0.70 of 1 per centum of the wages (as so defined) paid after December 31, 1965, and before January I, I968, and so reported, (C) 0.95 of 1 per centum of the wages (as so defined) paid after December 31, I967, and before January I, 1970, and so reported, (D) 1.10 per centum of the wages (as so defined) paid after December 3I, I969, and before January 1, 1973, and so reported, (E) 1.1 per centum of the wages (as so defined) paid after December 31, 1972, and before January 1, 1974, and so reported, (F) 1.15 per centum of the wages (as so defined) paid after December 31, 1973, and before January I, I978, and so reported, (G) 1.55 per centum of the wages (as so defined) paid after December 3I, 1977, and before January 1, 1979, and so reported, (H) 1.50 per centum of the wages (as so defined) paid after December 31, 1978, and before January 1, 1980, and so reported, (I) 1.12 per centum of the wages (as so defined) paid after December 31, 1979, and before January I, 1981, and so reported, (J) I.30 per centum of the wages (as so defined) paid after December 31, 1980, and before January 1, 1982, and so reported, (K) 1.65 per centum of the wages (as so defined) paid after December 3I, 1981, and before January 1, 1983, and so reported, (L) 1.25 per centum of the wages (as so defined) paid after December 31, 1982, and before January I, 1984, and so reported, (M) 1.00 per centum of the wages (as so defined) paid after December 3I, 1983, and before January 1, 1988, and so reported, (N) 1.06 per centum of the wages (as so defined) paid after December 31, 1987, and before January 1, 1990, and so reported, (O) 1.20 per centum of the wages (as so defined) paid after December 31, 1989, and before January 1, 2000, and so reported, and (P) 1.42 per centum of the wages (as so defined) paid after December 3I, 1999, and so reported, which wages shall be certified by the Secretary of Health and Human Services on the basis of the records of wages established and maintained by such Secretary in accordance with such reports; and

(2)(A) ⅜ of 1 per centum of the amount of self-employment income (as defined in section I402 of the Internal Revenue Code of 1986) reported to the Secretary of the Treasury or his delegate on tax returns under subtitle F of the Internal Revenue Code of 1986 for any taxable year beginning after December 31, 1956, and before January 1, 1966, (B) 0.525 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1965, and before January 1, 1968, (C) 0.7125 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1967, and before January I, 1970, (D) 0.825 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, I969, and before January 1, 1973, (E) 0.795 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1972, and before January 1, 1974, (F) 0.815 of I per centum of the amount of self-employment income (as so defined) as reported for any taxable year beginning after December 3I, 1973, and before January 1, 1978, (G) 1.090 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1977, and before January 1, 1979, (H) 1.0400 per centum of the amount of

self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1978, and before January 1, 1980, (I) 0.7775 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1979, and before January 1, 1981, (J) 0.9750 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1980, and before January 1, 1982, (K) 1.2375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1981, and before January 1, 1983, (L) 0.9375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1982, and before January 1, 1984, (M) 1.00 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1983, and before January 1, 1988, (N) 1.06 per centum of the self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1987, and before January 1, 1990, (O) 1.20 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1989, and before January 1, 2000, and (P) 1.42 per centum of the self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1999, which self-employment income shall be certified by the Secretary of Health and Human Services on the basis of the records of self-employment income established and maintained by the Secretary of Health and Human Services in accordance with such returns.

(c) Board of Trustees; duties; reports to Congress

With respect to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund (hereinafter in this subchapter called the "Trust Funds") there is hereby created a body to be known as the Board of Trustees of the Trust Funds (hereinafter in this subchapter called the "Board of Trustees") which Board of Trustees shall be composed of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this subchapter called the "Managing Trustee"). The Commissioner of Social Security shall serve as Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

[*See main edition for text of (1) to (5)*]

The report provided for in paragraph (2) of this subsection shall include a statement of the assets of, and the disbursements made from, the Trust Funds during the preceding fiscal year, an estimate of the expected future income to, and disbursements to be made from, the Trust Funds during each of the next ensuing five fiscal years, and a statement of the actuarial status of the Trust Funds. Such report shall include an actuarial opinion by the Chief Actuary of the Social Security Administration certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable. Such report shall also include an actuarial analysis of the benefit disbursements made from the Federal Old-Age and Survivors Insurance Trust Fund with respect to disabled beneficiaries. Such report shall be printed as a House document of the session of the Congress to which the report is made. A person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Funds.

(d) Investments

It shall be the duty of the Managing Trustee to invest such portion of the Trust Funds as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Funds. Such obligations issued for purchase by the Trust Funds shall have maturities fixed with due regard for the needs of the Trust Funds and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of four years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest of such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

[*See main edition for text of (e) and (f)*]

(g) Payments into Treasury

(1)(A) The Managing Trustee of the Trust Funds (which for purposes of this paragraph

shall include also the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established by subchapter XVIII of this chapter) is directed to pay from the Trust Funds into the Treasury—

(i) the amounts estimated by him and the Secretary of Health and Human Services which will be expended, out of moneys appropriated from the general fund in the Treasury, during a three-month period by the Department of Health and Human Services and the Treasury Department for the administration of subchapters II, XVI, and XVIII of this chapter and subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, and chapters 2 and 21 of the Internal Revenue Code of 1986, less

(ii) the amounts estimated (pursuant to the method prescribed by the Board of Trustees under paragraph (4) of this subsection) by the Secretary of Health and Human Services which will be expended, out of moneys made available for expenditures from the Trust Funds, during such three-month period to cover the cost of carrying out the functions of the Department of Health and Human Services, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenuc Code of 1986 other than those referred to in clause (i).

Such payments shall be carried into the Treasury as the net amount of repayments due the general fund account for reimbursement of expenses incurred in counection with the administration of subchapters II, XVI, and XVIII of this chapter and subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, and chapters 2 and 21 of the Internal Revenue Code of 1986. A final accounting of such payments for any fiscal year shall be made at the earliest practicable date after the close thereof. There are hereby authorized to be made available for expenditure, out of any cr all of the Trust Funds, such amounts as the Congress may deem appropriate to pay the costs of the part of the administration of this subchapter, subchapter XVI, and subchapter XVIII of this chapter for which the Secretary of Health and Human Services is responsible and of carrying out the functions of the Department of Health and Human Services, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 other than those referred to in clause (i) of the first sentence of this subparagraph.

(B) After the close of each fiscal year the Secretary of Health and Human Services shall determine the portion of the costs, incurred during such fiscal year, of administration of this subchapter, subchapter XVI, and subchapter XVIII of this chapter and of carrying out the functions of the Department of Health and Human Services, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of subparagraph (A)), which should have been borne by the general fund in the Treasury and the portion of such costs which should have been borne by each of the Trust Funds; except that the determination of the amounts to be borne by the general fund in the Treasury with respect to expenditures incurred in carrying out such functions specified in section 432 of this title shall be made pursuant to the method prescribed by the Board of Trustees under paragraph (4) of this subsection. After such determination has been made, the Secretary of Health and Human Services shall certify to the Managing Trustee the amounts, if any, which should be transferred from one to any of the other of such Trust Funds and the amounts, if any, which should be transferred between the Trust Funds (or one of the Trust Funds) and the general fund in the Treasury, in order to insure that each of the Trust Funds and the general fund in the Trcasury have borne their proper share of the costs, incurred during such fiscal year, for the part of the administration of this subchapter, subchapter XVI, and subchapter XVIII of this chapter for which the Secretary of Health and Human Services is responsible and of carrying out the functions of the Department of Health and Human Services, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of subparagraph (A)). The Managing Trustee is authorized and directed to transfer any such amounts in accordance with any certification so made.

(2) The Managing Trustee is directed to pay from time to time from the Trust Funds into the Treasury the amount estimated by him as taxes imposed under section 3101(a) which are subject to refund under section 6413(c) of the Internal Revenue Code of 1986 with respect to wages (as defined in section 1426 of the Internal Revenue Code of 1939 and section 3121 of the Internal Revenue Code of 1986) paid after December 31, 1950. Such taxes shall be determined on the basis of the records of wages established and maintained by the Secretary of Health and Human Services in accordance with the wages reported to the Commissioner of Internal Revenue pursuant to section 1420(c) of the Internal Revenue Code of 1939 and to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1986, and the Secretary shall furnish the Managing Trustee such information as may be required by the Trustee for such purpose. The payments by the Managing Trustee shall be covered into the Treasury as repayments to the account for refunding internal revenue collections. Payments pursuant to the first sentence of this paragraph shall be made from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund in the ratio in which amounts were appropriated to such Trust Funds under clause (3) of subsection (a) of this section and clause (1) of subsection (b) of this section.

[*See main edition for text of (3)*]

(4) The Board of Trustees shall prescribe before January 1, 1981, the method of determining the costs which should be borne by the

general fund in the Treasury of carrying out the functions of the Department of Health and Human Services, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of paragraph (1)(A)). If at any time or times thereafter the Boards of Trustees of such Trust Funds deem such action advisable they may modify the method so determined.

[*See main edition for text of (h)*]

(i) Gifts and bequests

(1) The Managing Trustee of the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund is authorized to accept on behalf of the United States money gifts and bequests made unconditionally to any one or more of such Trust Funds or to the Department of Health and Human Services, or any part or officer thereof, for the benefit of any of such Funds or any activity financed through such Funds.

[*See main edition for text of (2); (j) and (k)*]

(l) Interfund borrowing

(1) If at any time prior to January 1988 the Managing Trustee determines that borrowing authorized under this subsection is appropriate in order to best meet the need for financing the benefit payments from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, the Managing Trustee may borrow such amounts as he determines to be appropriate from the other such Trust Fund, or, subject to paragraph (5), from the Federal Hospital Insurance Trust Fund established under section 1395i of this title for transfer to and deposit in the Trust Fund whose need for financing is involved.

(2) In any case where a loan has been made to a Trust Fund under paragraph (1), there shall be transferred on the last day of each month after such loan is made, from the borrowing Trust Fund to the lending Trust Fund, the total interest accrued to such day with respect to the unrepaid balance of such loan at a rate equal to the rate which the lending Trust Fund would earn on the amount involved if the loan were an investment under subsection (d) of this section (even if such an investment would earn interest at a rate different than the rate earned by investments redeemed by the lending fund in order to make the loan).

(3)(A) If in any month after a loan has been made to a Trust Fund under paragraph (1), the Managing Trustee determines that the assets of such Trust Fund are sufficient to permit repayment of all or part of any loans made to such Fund under paragraph (1), he shall make such repayments as he determines to be appropriate.

(B)(i) If on the last day of any year after a loan has been made under paragraph (1) by the Federal Hospital Insurance Trust Fund to the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, the Managing Trustee determines that the OASDI trust fund ratio exceeds 15 percent, he shall transfer from the borrowing Trust Fund to the Federal Hospital Insurance Trust Fund an amount that—

(I) together with any amounts transferred from another borrowing Trust Fund under this paragraph for such year, will reduce the OASDI trust fund ratio to 15 percent; and

(II) does not exceed the outstanding balance of such loan.

(ii) Amounts required to be transferred under clause (i) shall be transferred on the last day of the first month of the year succeeding the year in which the determination described in clause (i) is made.

(iii) For purposes of this subparagraph, the term "OASDI trust fund ratio" means, with respect to any calendar year, the ratio of—

(I) the combined balance in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as of the last day of such calendar year, to

(II) the amount estimated by the Secretary to be the total amount to be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund during the calendar year following such calendar year for all purposes authorized by this section (other than payments of interest on, and repayments of, loans from the Federal Hospital Insurance Trust Fund under paragraph (1), but excluding any transfer payments between such trust funds and reducing the amount of any transfer to the Railroad Retirement Account by the amount of any transfers into either such trust fund from that Account).

(C)(i) The full amount of all loans made under paragraph (1) (whether made before or after January 1, 1983) shall be repaid at the earliest feasible date and in any event no later than December 31, 1989.

(ii) For the period after December 31, 1987, and before January 1, 1990, the Managing Trustee shall transfer each month to the Federal Hospital Insurance Trust Fund from any Trust Fund with any amount outstanding on a loan made from the Federal Hospital Insurance Trust Fund under paragraph (1) an amount not less than an amount equal to (I) the amount owed to the Federal Hospital Insurance Trust Fund by such Trust Fund at the beginning of such month (plus the interest accrued on the outstanding balance of such loan during such month), divided by (II) the number of months elapsing after the preceding month and before January 1990. The Managing Trustee may, during this period, transfer larger amounts than prescribed by the preceding sentence.

[*See main edition for text of (4)*]

(5)(A) No amounts may be borrowed from the Federal Hospital Insurance Trust Fund under paragraph (1) during any month if the Hospital Insurance Trust Fund ratio for such month is less than 10 percent.

(B) For purposes of this paragraph, the term "Hospital Insurance Trust Fund ratio" means, with respect to any month, the ratio of—

(i) the balance in the Federal Hospital Insurance Trust Fund, reduced by the outstanding amount of any loan (including interest thereon) theretofore made to such Trust Fund under this subsection, as of the last day of the second month preceding such month, to

(ii) the amount obtained by multiplying by twelve the total amount which (as estimated by the Secretary) will be paid from the Federal Hospital Insurance Trust Fund during the month for which such ratio is to be determined (other than payments of interest on, or repayments of loans from another Trust Fund under this subsection), and reducing the amount of any transfers to the Railroad Retirement Account by the amount of any transfer into the Hospital Insurance Trust Fund from that Account.

(m) Accounting for unnegotiated benefit checks

(1) The Secretary of the Treasury shall implement procedures to permit the identification of each check issued for benefits under this subchapter that has not been presented for payment by the close of the sixth month following the month of its issuance.

(2) The Secretary of the Treasury shall, on a monthly basis, credit each of the Trust Funds for the amount of all benefit checks (including interest thereon) drawn on such Trust Fund more than 6 months previously but not presented for payment and not previously credited to such Trust Fund, to the extent provided in advance in appropriation Acts.

(3) If a benefit check is presented for payment to the Treasury and the amount thereof has been previously credited pursuant to paragraph (2) to one of the Trust Funds, the Secretary of the Treasury shall nevertheless pay such check, if otherwise proper, recharge such Trust Fund, and notify the Secretary of Health and Human Services.

(4) A benefit check bearing a current date may be issued to an individual who did not negotiate the original benefit check and who surrenders such check for cancellation if the Secretary of the Treasury determines it is necessary to effect proper payment of benefits.

(Aug. 14, 1935, ch. 531, title II, § 201, 49 Stat. 622; Aug. 10, 1939, ch. 666, title II, § 201, 53 Stat. 1362; Feb. 25, 1944, ch. 63, title IX, § 902, 58 Stat. 93; Aug. 28, 1950, ch. 809, title I, § 109(a), 64 Stat. 521; Aug. 1, 1956, ch. 836, title I, § 103(e), 70 Stat. 819; Aug. 28, 1958, Pub. L. 85-840, title II, § 205(a), 72 Stat. 1021; Sept. 22, 1959, Pub. L. 86-346, title I, § 104(2), 73 Stat. 622; Sept. 13, 1960, Pub. L. 86-778, title VII, § 701(a)-(e), 74 Stat. 992, 993; July 30, 1965, Pub. L. 89-97, title I, § 108(a), title III, §§ 305, 327, 79 Stat. 338, 370, 400; Jan. 2, 1968, Pub. L. 90-248, title I, §§ 110, 169, 81 Stat. 837, 875; Dec. 30, 1969, Pub. L. 91-172, title X, § 1005, 83 Stat. 741; July 1, 1972, Pub. L. 92-336, title II, § 205, 86 Stat. 422; Oct. 30, 1972, Pub. L. 92-603, title I, §§ 132(a)-(c), 136, title III, § 305(a), 86 Stat. 1360, 1364, 1484; Dec. 31, 1973, Pub. L. 93-233, § 7, 87 Stat. 955; Jan. 2, 1976, Pub. L. 94-202, § 8(d), 89 Stat. 1137; Dec. 20, 1977, Pub. L. 95-216, title I, § 102(a), 91 Stat. 1513; June 9, 1980, Pub. L. 96-265, title III, § 310(a), title V, § 505(a)(5), 94 Stat. 459, 474; Oct. 9, 1980, Pub. L. 96-403, § 1, 94 Stat. 1709; Dec. 29, 1981, Pub. L. 97-123, § 1(a), 95 Stat. 1659; Apr. 20, 1983, Pub. L. 98-21, title I, §§ 126, 141(a), 142(a)(1), (2)(A), (3), (4), 152(a), 154(a), title III, § 341(a), 97 Stat. 91, 98-100, 105, 107, 135; July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2661(a), 2663(a)(1), (j)(2)(A)(i), 98 Stat. 1156, 1160, 1170; Apr. 7, 1986, Pub. L. 99-272, title IX, § 9213(a), 100 Stat. 180; Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095.)

REFERENCES IN TEXT

Subchapter A of chapter 9 of the Internal Revenue Code of 1939, referred to in subsecs. (a)(1) to (3) and (g)(1), was comprised of sections 1400 to 1432, and was repealed (subject to certain exceptions) by section 7851(a)(3) of the Internal Revenue Code of 1986.

Subchapter E of chapter 1 of the Internal Revenue Code of 1939, referred to in subsecs. (a)(4) and (g)(1), was comprised of sections 480 to 482, and was repealed (subject to certain exceptions) by section 7851(a)(1)(A) of the Internal Revenue Code of 1986.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provision of the 1986 Code, see section 7852(b) if the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

Chapters 2 and 21 and subtitle F of the Internal Revenue Code of 1986, referred to in subsec. (g)(1)(A) and (2), are classified to sections 1401 et seq., 3101 et seq., and 6001 et seq., respectively, of Title 26, Internal Revenue Code.

AMENDMENTS

1986—Subsecs. (a)(3), (4), (b)(1)(A), (2)(A). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" wherever appearing.

Subsec. (c). Pub. L. 99-272, in provisions following par. (5), substituted ". Such report shall" for "; *Provided*, That the certification shall not refer to economic assumptions underlying the Trustee's report, and shall".

Subsec. (g)(1), (2), (4). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" wherever appearing.

1984—Subsecs. (a)(3), (4), (b)(1), (2). Pub. L. 98-369, § 2663(j)(2)(A)(i), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (d). Pub. L. 98-369, § 2663(a)(1)(A), substituted "chapter 31 of title 31" for "the Second Liberty Bond Act, as amended" and "public-debt obligations" for "public-debt obligation".

Subsec. (g)(1). Pub. L. 98-369, § 2663(j)(2)(A)(i), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (g)(1)(B). Pub. L. 98-369, § 2663(a)(1)(B), substituted "clause" for "clauses" in first sentence.

Subsecs. (g)(2), (4), (i)(1). Pub. L. 98-369, § 2663(j)(2)(A)(i), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (*l*)(3)(B)(i). Pub. L. 98-369, § 2661(a), inserted "Insurance" after "Survivors".

1983—Subsec. (a). Pub. L. 98-21, § 141(a), in provisions following par. (4), substituted "monthly on the first day of each calendar month" for "from time to time", wherever appearing, and "to be paid or deposited into the Treasury during such month" for "paid to or deposited into the Treasury", and inserted provision that all amounts transferred to either Trust Fund

under the preceding sentence shall be invested by the Managing Trustee in the same manner and to the same extent as the other assets of such Trust Fund; and such Trust Fund shall pay interest to the general fund on the amount so transferred on the first day of any month at a rate (calculated on a daily basis, and applied against the difference between the amount so transferred on such first day and the amount which would have been transferred to the Trust Fund up to that day under the procedures in effect on Jan. 1, 1983) equal to the rate earned by the investments of such Fund in the same month under subsection (d) of this section.

Subsec. (b)(1)(K) to (P). Pub. L. 98-21, § 126(a), substituted, in cls. (K), (L), and (M), appropriations equivalent to 100 per centum of (K) 1.65 per centum of the wages (as so defined) paid after Dec. 31, 1981, and before Jan. 1, 1983, and so reported, (L) 1.25 per centum of the wages (as so defined) paid after Dec. 31, 1982, and before Jan. 1, 1984, and so reported, (M) 1.00 per centum of the wages (as so defined) paid after Dec. 31, 1983, and before Jan. 1, 1988, and so reported, for such appropriations of (K) 1.65 per centum of the wages (as so defined) paid after Dec. 31, 1981, and before Jan. 1, 1985, and so reported, (L) 1.90 per centum of the wages (as so defined) paid Dec. 31, 1984, and before Jan. 1, 1990, and so reported, and (M) 2.20 por centum of the wages (as so defined) paid after Dec. 31, 1989, and so reported, and added cls. (N) to (P).

Subsec. (b)(2)(K) to (P). Pub. L. 98-21, § 126(b), substituted, in cls. (K), (L), and (M), appropriations equivalent to 100 per centum of (K) 1.2375 per centum of the amount of self-employment income (as so defined) so reported for any taxble year beginning after Dec. 31, 1981, and before Jan. I, 1983, (L) 0.9375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after Dec. 31, 1982, and before Jan. 1, 1984, (M) 1.00 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after Dec. 31, 1983, and before Jan. 1, 1988, for such appropriations of (K) I.2375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after Dec. 31, 1981, and before Jan. 1, 1985, (L) 1.4250 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after Dec. 31, 1984, and before Jan. I, 1990, and (M) 1.6500 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after Dec. 31, 1989, and added cls. (N) to (P).

Subsec. (c). Pub. L. 98-21, § 341(a), substituted "Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate" for "Secretary of Health, Education, and Welfare, all ex officio" in provisions preceding par. (1), and inserted provision that a person serving on the Board of Trustees shall not bo considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Funds, in provisions following par. (5).

Pub. L. 98-21, § 154(a), in provisions following par. (5), inserted provision that the report referred to in par. (2) shall include an actuarial opinion by the Chief Actuary of the Social Security Administration certifying that the teehniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable, and provided further that the certification shall not refer to economic assumptions underlying the Trustee's report.

Subsec. (*l*)(1). Pub. L. 98-21, § 142(a)(1), substituted reference to January 1988 for reference to January 1983, and inserted ", subject to paragraph (5)," after "such Trust Fund, or".

Subsec. (*l*)(2). Pub. L. 98-21, § 142(a)(2)(A), substituted "on the last day of each month after such loan is made" for "from time to time", substituted "the total interest accrued to such day" for "interest", and inserted "(even if such an investment would earn interest at a rate different than the rate earned by investments redeemed by the lending fund in order to make the loan)".

Subsec. (*l*)(3). Pub. L. 98-21, § 142(a)(3), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (*l*)(5). Pub. L. 98-21, § 142(a)(4), added par. (5).

Subsec. (m). Pub. L. 98-21, § 152(a), added subsec. (m).

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9213(c) of Pub. L. 99-272 provided that: "The amendments made by this section [amending sections 401, 1395i, and 1395t of this title] shall become effective on the date of the enactment of this Act [Apr. 7, 1986]."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2664 of Pub. L. 98-369 provided that:

"(a) Except as otherwise specifically provided, the amendments made by sections 2661 and 2662 [amending sections 401, 402, 403, 405, 409, 410, 415, 416, 423, 428, and 429 of this title and sections 86, 134, 422A, 3121, 3306, and 6334 of Title 26, Internal Revenue Code, enacting provisions set out as notes under sections 402 and 403 of this title and sections 3121 and 3306 of Title 26, and amending provisions set out as notes under sections 415 and 902 of this title, section 3121 of Title 26, and section 3023 of Title 38, Veterans' Benefits] shall be effective as though they had been included in the enactment of the Social Security Amendments of 1983 (Public Law 98-21).

"(b) Except to the extent otherwise specifically provided in this subtitle [subtitle D §§ 2661 to 2664 of Pub. L. 98-369], the amendments made by section 2663 [amending sections 401, 402, 403, 405, 408-410, 411, 413, 415, 416-418, 421-423, 426, 428, 430, 431, 433, 502, 503, 602, 603, 606, 607, 609, 610, 614, 615, 820, 631, 632, 633, 634, 636, 641, 643-645, 652-654, 656, 660, 662, 674, 902, 903, 907, 1101, 1104, 1108, 1301, I302, 1306, 1307, 1314-1316, 1320, 1320a-5, I320b-1, 1381a-1382a, 1382c, 1382d, 1382g, 1382j, 1383, 1395i, 1395s-1395u, 1396, 1397a, and 1397e of this title and sections 51, 1402, 3121, 6057, 6103, and 6511 of Title 26, repealing sections 1331-1336 of this title, and enacting provisions set out as notes under sections 1301 and 1307 of this title] shall be effective on the date of the enactment of this Act [July 18, 1984]; but none of such amendments shall be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date."

EFFECTIVE DATE OF 1983 AMENDMENT

Section 141(c) of Pub. L. 98-21 provided that: "The amendments made by this section [amending sections 401 and 1395i of this title] shall become effective on the first day of the month following the month in which this Act is enacted [Apr. 1983]."

Section 142(a)(2)(B) of Fub. L. 98-21 provided that: "The amendment made by this paragraph [amending subsec. (*l*)(2) of this section] shall apply with respect to months beginning more than thirty days after the dato of enactment of this Act [Apr. 20, 1983]."

Section 152(b) of Pub. L. 98-21 provided that: "The amendment made by subsection (a) [enacting subsec. (m) of this section] shall apply with respect to all checks for benefits under title II of the Social Security Act [this subchapter] which are issued on or aftor the first day of the twenty-fourth month following the month in which this Act is enacted [Apr. 1983]."

Section 154(e) of Pub. L. 98-21 provided that: "The amendments made by this section [amending sections

401, 1395l, and 1395t of this title] shall take effect on the date of the enactment of this Act [Apr. 20, 1983]."

Section 341(d) of Pub. L. 98-21 provided that: "The amendments made by this section [amending sections 401, 1395l, and 1395t of this title] shall become effective on the date of enactment of this Act [Apr. 20, 1983]."

TRANSFER OF EQUIVALENT OF 1983 TAX INCREASES TO PAYOR FUNDS; REPORTS

Section 121(e) of Pub. L. 98-21, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—There are hereby appropriated to each payor fund amounts equivalent to the aggregate increase in tax liabilities under chapter 1 of the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.] which is attributable to the application of sections 86 and 871(a)(3) of such Code (as added by this section) [26 U.S.C. 86, 871(a)(3)] to payments from such payor fund.

"(2) TRANSFERS.—The amounts appropriated by paragraph (1) to any payor fund shall be transferred from time to time (but not less frequently than quarterly) from the general fund of the Treasury on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in such paragraph. Any such quarterly payment shall be made on the first day of such quarter and shall take into account social security benefits estimated to be received during such quarter. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) PAYOR FUND.—The term 'payor fund' means any trust fund or account from which payments of social security benefits are made.

"(B) SOCIAL SECURITY BENEFITS.—The term 'social security benefits' has the meaning given such term by section 86(d)(1) of the Internal Revenue Code of 1986 [26 U.S.C. 86(d)(1)].

"(4) REPORTS.—The Secretary of the Treasury shall submit annual reports to the Congress and to the Secretary of Health and Human Services and the Railroad Retirement Board on—

"(A) the transfers made under this subsection during the year, and the methodology used in determining the amount of such transfers and the funds or account to which made, and

"(B) the anticipated operation of this subsection during the next 5 years."

REIMBURSEMENT TO TRUST FUNDS FOR UNNEGOTIATED BENEFIT CHECKS

Section 152(c) of Pub. L. 98-21 provided that:

"(1) The Secretary of the Treasury shall transfer from the general fund of the Treasury to the Federal Old-Age and Survivors Insurance Trust Fund and to the Federal Disability Insurance Trust Fund, in the month following the month in which this Act is enacted [Apr. 1983] and in each of the succeeding 30 months, such sums as may be necessary to reimburse such Trust Funds in the total amount of all checks (including interest thereof) which he and the Secretary of Health and Human Services jointly determine to be unnegotiated benefit checks, to the extent provided in advance in appropriation Acts. After any amounts authorized by this subsection have been transferred to a Trust Fund with respect to any benefit check, the provisions of paragraphs (3) and (4) of section 201(m) of the Social Security Act (as added by subsection (a) of this section) [subsec. (m)(3), (4) of this section] shall be applicable to such check.

"(2) As used in paragraph (1), the term 'unnegotiated benefit checks' means checks for benefits under title II of the Social Security Act [this subchapter] which are issued prior to the twenty-fourth month following the month in which this Act is enacted [Apr. 1983], which remain unnegotiated after the sixth month following the date on which they were issued, and with respect to which no transfers have previously been made in accordance with the first sentence of such paragraph."

STUDY OF FLOAT PERIOD OF MONTHLY INSURANCE BENEFIT CHECKS

Section 153 of Pub. L. 98-21 provided that:

"(a) The Secretary of Health and Human Services and the Secretary of the Treasury shall jointly undertake, as soon as possible after the date of the enactment of this Act [April 20, 1983], a thorough study with respect to the period of time (hereafter in this section referred to as the 'float period') between the issuance of checks from the general fund of the Treasury in payment of monthly insurance benefits under title II of the Social Security Act [this subchapter] and the transfer to the general fund from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, as applicable, of the amounts necessary to compensate the general fund for the issuance of such checks. Each such Secretary shall consult the other regularly during the course of the study and shall, as appropriate, provide the other with such information and assistance as he may require.

"(b) The study shall include—

"(1) an investigation of the feasibility and desirability of maintaining the float periods which are allowed as of the date of the enactment of this section in the procedures governing the payment of monthly insurance benefits under title II of the Social Security Act [this subchapter], and of the general feasibility and desirability of making adjustments in such procedures with respect to float periods; and

"(2) a separate investigation of the feasibility and desirability of providing, as a specific form of adjustment in such procedures with respect to float periods, for the transfer each day to the general fund of the Treasury from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as appropriate, of amounts equal to the amounts of the checks referred to in subsection (a) which are paid by the Federal Reserve Banks on such day.

"(c) In conducting the study required by subsection (a), the Secretaries shall consult, as appropriate, the Director of the Office of Management and Budget, and the Director shall provide the Secretaries with such information and assistance as they may require. The Secretaries shall also solicit the views of other appropriate officials and organizations.

"(d)(1) Not later than six months after the date of the enactment of this Act [Apr. 20, 1983], the Secretaries shall submit to the President and the Congress a report of the findings of the investigation required by subsection (b)(1), and the Secretary of the Treasury shall by regulation make such adjustments in the procedures governing the payment of monthly insurance benefits under title II of the Social Security Act [this subchapter] with respect to float periods (other than adjustments in the form described in subsection (b)(2)) as may have been found in such investigation to be necessary or appropriate.

"(2) Not later than twelve months after the date of the enactment of this Act [Apr. 20, 1983], the Secretaries shall submit to the President and the Congress a report of the findings of the separate investigation required by subsection (b)(2), together with their recommendations with respect thereto; and, to the extent necessary or appropriate to carry out such recommendations, the Secretary of the Treasury shall by regulation make adjustments in the procedures with respect to float periods in the form described in such subsection."

DUE DATE FOR 1983 REPORT ON OPERATION AND STATUS OF TRUST FUND

Section 154(d) of Pub. L. 98-21 provided that: "Notwithstanding sections 201(c)(2), 1817(b)(2), and 1841(b)(2) of the Social Security Act [42 U.S.C. 401(c)(2), 1395i(b)(2), 1395t(b)(2)], the annual reports of the Boards of Trustees of the Trust Funds which are required in the calendar year 1983 under those sections may be filed at any time not later than forty-five days after the date of the enactment of this Act [Apr. 20, 1983]."

EXECUTIVE ORDER NO. 12335

Ex. Ord. No. 12335, Dec. 16, 1981, 46 F.R. 61833, as amended by Ex. Ord. No. 12397, Dec. 23, 1982, 47 F.R. 57651; Ex. Ord. No. 12402, Jan. 15, 1983, 48 F.R. 2311, which established the National Commission on Social Security Reform and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 415, 417, 421, 429, 909, 910, 1320b-1, 1395i, 1395t of this title; title 26 section 3121.

§ 402. Old-age and survivors insurance benefit payments

(a) Old-age insurance benefits

Every individual who—

(1) is a fully insured individual (as defined in section 414(a) of this title),

(2) has attained age 62, and

(3) has filed application for old-age insurance benefits or was entitled to disability insurance benefits for the month preceding the month in which he attained retirement age (as defined in section 416(*l*) of this title),

shall be entitled to an old-age insurance benefit for each month, beginning with—

(A) in the case of an individual who has attained retirement age (as defined in section 416(*l*) of this title), the first month in which such individual meets the criteria specified in paragraphs (1), (2), and (3), or

(B) in the case of an individual who has attained age 62, but has not attained retirement age (as defined in section 416(*l*) of this title), the first month throughout which such individual meets the criteria specified in paragraphs (1) and (2) (if in that month he meets the criterion specified in paragraph (3)),

and ending with the month preceding the month in which he dies. Except as provided in subsection (q) and subsection (w) of this section, such individual's old-age insurance benefit for any month shall be equal to his primary insurance amount (as defined in section 415(a) of this title) for such month.

(b) Wife's insurance benefits

(1) The wife (as defined in section 416(b) of this title) and every divorced wife (as defined in section 416(d) of this title) of an individual entitled to old-age or disability insurance benefits, if such wife or such divorced wife—

[*See main edition for text of* (A) *to* (D)]

shall (subject to subsection (s) of this section) be entitled to a wife's insurance benefit for each month, beginning with—

(i) in the case of a wife or divorced wife (as so defined) of an individual entitled to old-age benefits, if such wife or divorced wife has attained retirement age (as defined in section 416(*l*) of this title), the first month in which she meets the criteria specified in subparagraphs (A), (B), (C), and (D), or

(ii) in the case of a wife or divorced wife (as so defined) of—

(I) an individual entitled to old-age insurance benefits, if such wife or divorced wife has not attained retirement age (as defined in section 416(*l*) of this title), or

(II) an individual entitled to disability insurance benefits,

the first month throughout which she is such a wife or divorced wife and meets the criteria specified in subparagraphs (B), (C), and (D) (if in such month she meets the criterion specified in subparagraph (A)),

whichever is earlier, and ending with the month preceding the month in which any of the following occurs—

[*See main edition for text of* (E) *to* (K), (2)]

(3) In the case of any divorced wife who marries—

(A) an individual entitled to benefits under subsection (c), (f), (g), or (h) of this section, or

(B) an individual who has attained the age of 18 and is entitled to benefits under subsection (d) of this section,

such divorced wife's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) (but subject to subsection (s) of this section), not be terminated by reason of such marriage.

(4)(A) The amount of a wife's insurance benefit for each month as determined after application of the provisions of subsections (q) and (k) of this section shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such wife (or divorced wife) for such month which is based upon her earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day she was employed by such entity, such service did not constitute "employment" as defined in section 410 of this title for purposes of this subchapter. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

[*See main edition for text of* (B)]

(5)(A) Notwithstanding the preceding provisions of this subsection, except as provided in subparagraph (B), the divorced wife of an individual who is not entitled to old-age or disability insurance benefits, but who has attained age 62 and is a fully insured individual (as defined

in section 414 of this title), if such divorced wife—

(i) meets the requirements of subparagraphs (A) through (D) of paragraph (1), and

(ii) has been divorced from such insured individual for not less than 2 years,

shall be entitled to a wife's insurance benefit under this subsection for each month, in such amount, and beginning and ending with such months, as determined (under regulations of the Secretary) in the manner otherwise provided for wife's insurance benefits under this subsection, as if such insured individual had become entitled to old-age insurance benefits on the date on which the divorced wife first meets the criteria for entitlement set forth in clauses (i) and (ii).

(B) A wife's insurance benefit provided under this paragraph which has not otherwise terminated in accordance with subparagraph (E), (F), (H), or (J) of paragraph (1) shall terminate with the month preceding the first month in which the insured individual is no longer a fully insured individual.

(c) Husband's insurance benefits

(1) The husband (as defined in section 416(f) of this title) and every divorced husband (as defined in section 416(d) of this title) of an individual entitled to old-age or disability insurance benefits, if such husband or such divorced husband—

(A) has filed application for husband's insurance benefits,

(B) has attained age 62 or (in the case of a husband) has in his care (individually or jointly with such individual) at the time of filing such application a child entitled to child's insurance benefits on the basis of the wages and self-employment income of such individual,

(C) in the case of a divorced husband, is not married, and

(D) is not entitled to old-age or disability insurance benefits, or is entitled to old-age or disability insurance benefits based on a primary insurance amount which is less than one-half of the primary insurance amount of such individual,

shall (subject to subsection(s) of this section) be entitled to a husband's insurance benefit for each month, beginning with—

(i) in the case of a husband or divorced husband (as so defined) of an individual who is entitled to an old-age insurance benefit, if such husband or divorced husband has attained retirement age (as defined in section 416(*l*) of this title), the first month in which he meets the criteria specified in subparagraphs (A), (B), (C), and (D), or

(ii) in the case of a husband or divorced husband (as so defined) of—

(I) an individual entitled to old-age insurance benefits, if such husband or divorced husband has not attained retirement age (as defined in section 416(*l*) of this title), or

(II) an individual entitled to disability insurance benefits,

the first month throughout which he is such a husband or divorced husband and meets the criteria specified in subparagraphs (B), (C), and (D) (if in such month he meets the criterion specified in subparagraph (A)),

whichever is earlier, and ending with the month preceding the month in which any of the following occurs:

(E) he dies,

(F) such individual dies,

(G) in the case of a husband, they are divorced and either (i) he has not attained age 62, or (ii) he has attained age 62 but has not been married to such individual for a period of 10 years immediately before the divorce became effective,

(H) in the case of a divorced husband, he marries a person other than such individual,

(I) in the case of a husband who has not attained age 62, no child of such individual is entitled to a child's insurance benefit,

(J) he becomes entitled to an old-age or disability insurance benefit based on a primary insurance amount which is equal to or exceeds one-half of the primary insurance amount of such individual, or

(K) such individual is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

(2)(A) The amount of a husband's insurance benefit for each month as determined after application of the provisions of subsections (q) and (k) of this section shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such husband (or divorced husband) for such month which is based upon his earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day he was employed by such entity, such service did not constitute "employment" as defined in section 410 of this title for purposes of this subchapter. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

[*See main edition for text of* (B)]

(3) Except as provided in subsection (q) of this section, and paragraph (2) of this subsection, such husband's insurance benefit for each month shall be equal to one-half of the primary insurance amount of his wife (or, in the case of a divorced husband, his former wife) for such month.

(4) In the case of any divorced husband who marries—

(A) an individual entitled to benefits under subsection (b), (e), (g), or (h) of this section, or

(B) an individual who has attained the age of 18 and is entitled to benefits under subsection (d) of this section, by reason of paragraph (1)(B)(ii) thereof,

such divorced husband's entitlement to benefits under this subsection, notwithstanding the provisions of paragraph (1) (but subject to subsec-

tion (s) of this section), shall not be terminated by reason of such marriage.

(5)(A) Notwithstanding the preceding provisions of this subsection, except as provided in subparagraph (B), the divorced husband of an individual who is not entitled to old-age or disability insurance benefits, but who has attained age 62 and is a fully insured individual (as defined in section 414 of this title), if such divorced husband—

(i) meets the requirements of subparagraphs (A) through (D) of paragraph (1), and

(ii) has been divorced from such insured individual for not less than 2 years,

shall be entitled to a husband's insurance benefit under this subsection for each month, in such amount, and beginning and ending with such months, as determined (under regulations of the Secretary) in the manner otherwise provided for husband's insurance benefits under this subsection, as if such insured individual had become entitled to old-age insurance benefits on the date on which the divorced husband first meets the criteria for entitlement set forth in clauses (i) and (ii).

(B) A husband's insurance benefit provided under this paragraph which has not otherwise terminated in accordance with subparagraph (E), (F), (H), or (J) of paragraph (1) shall terminate with the month preceding the first month in which the insured individual is no longer a fully insured individual.

(d) Child's insurance benefits

(1) Every child (as defined in section 416(e) of this title) of an individual entitled to old-age or disability insurance benefits, or of an individual who dies a fully or currently insured individual, if such child—

[*See main edition for text of (A) to (C)*]

shall be entitled to a child's insurance benefit for each month, beginning with—

(i) in the case of a child (as so defined) of such an individual who has died, the first month in which such child meets the criteria specified in subparagraphs (A), (B), and (C), or

(ii) in the case of a child (as so defined) of an individual entitled to an old-age insurance benefit or to a disability insurance benefit, the first month throughout which such child is a child (as so defined) and meets the criteria specified in subparagraphs (B) and (C) (if in such month he meets the criterion specified in subparagraph (A)),

whichever is earlier, and ending with the month preceding whichever of the following first occurs—

[*See main edition for text of (D) to (F)*]

(G) if such child was under a disability (as so defined) at the time he attained the age of 18 or if he was not under a disability (as so defined) at such time but was under a disability (as so defined) at or prior to the time he attained (or would attain) the age of 22—

(I) the termination month, subject to section 423(e) of this title (and for purposes of this subparagraph, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 422(c)(4)(A) of this title, the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity),

or (if later) the earlier of—

(ii) the first month during no part of which he is a full-time elementary or secondary school student, or

(iii) the month in which he attains the age of 19,

but only if he was not under a disability (as so defined) in such earlier month.

Entitlement of any child to benefits under this subsection on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits shall also end with the month before the first month for which such individual is not entitled to such benefits unless such individual is, for such later month, entitled to old-age insurance benefits or unless he dies in such month. No payment under this paragraph may be made to a child who would not meet the definition of disability in section 423(d) of this title except for paragraph (1)(B) thereof for any month in which he engages in substantial gainful activity.

[*See main edition for text of (2) to (4)*]

(5) In the case of a child who has attained the age of eighteen and who marries—

(A) an individual entitled to benefits under subsection (a), (b), (c), (e), (f), (g), or (h) of this section or under section 423(a) of this title, or

(B) another individual who has attained the age of eighteen and is entitled to benefits under this subsection,

such child's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) of this subsection but subject to subsection (s) of this section, not be terminated by reason of such marriage.

(6) A child whose entitlement to child's insurance benefits on the basis of the wages and self-employment income of an insured individual terminated with the month preceding the month in which such child attained the age of 18, or with a subsequent month, may again become entitled to such benefits (provided no event specified in paragraph (1)(D) has occurred) beginning with the first month thereafter in which he—

[*See main edition for text of (A) to (D)*]

(E) if he was under a disability (as so defined), the termination month (as defined in paragraph (1)(G)(i)), subject to section 423(e) of this title, or (if later) the earlier of—

[*See main edition for text of (i) and (ii)*]

(7) For the purposes of this subsection—

(A) A "full-time elementary or secondary school student" is an individual who is in full-time attendance as a student at an elementary or secondary school, as determined by the Secretary (in accordance with regulations prescribed by him) in the light of the standards and practices of the schools involved, except that no individual shall be considered a "full-time elementary or secondary school student" if he is paid by his employer while attending an elementary or secondary school at the request, or pursuant to a requirement, of his employer. An individual shall not be considered a "full-time elementary or secondary school student" for the purpose of this section while that individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to his conviction of an offense (committed after the effective date of this sentence [1]) which constituted a felony under applicable law. An individual who is determined to be a full-time elementary or secondary school student shall be deemed to be such a student throughout the month with respect to which such determination is made.

[*See main edition for text of (B) to (D)*]

(8) In the case of—

[*See main edition for text of (A) and (B)*]

a child of such individual adopted after such individual became entitled to such old-age or disability insurance benefits shall be deemed not to meet the requirements of clause (i) or (iii) of paragraph (1)(C) unless such child—

(C) is the natural child or stepchild of such individual (including such a child who was legally adopted by such individual), or

(D)(i) was legally adopted by such individual in an adoption decreed by a court of competent jurisdiction within the United States,

(ii) was living with such individual in the United States and receiving at least one-half of his support from such individual (I) if he is an individual referred to in subparagraph (A), for the year immediately before the month in which such individual became entitled to old-age insurance benefits or, if such individual had a period of disability which continued until he had become entitled to old-age insurance benefits, the month in which such period of disability began, or (II) if he is an individual referred to in subparagraph (B), for the year immediately before the month in which began the period of disability of such individual which still exists at the time of adoption (or, if such child was adopted by such individual after such individual attained retirement age (as defined in section 416(*l*) of this title) the period of disability of such individual which existed in the month preceding the month in which he attained retirement age (as defined in section 416(*l*) of this title)), or the month in which such individual became entitled to disability insurance benefits, or (III) if he is an individual referred to in either subparagraph (A) or subparagraph (B) and the child is the grandchild or great-grandchild of such individual or his or her spouse, for the year immediately before the month in which such child files his or her application for child's insurance benefits, and

(iii) had not attained the age of 18 before he began living with such individual.

In the case of a child who was born in the one-year period during which such child must have been living with and receiving at least one-half of his support from such individual, such child shall be deemed to meet such requirements for such period if, as of the close of such period, such child has lived with such individual in the United States and received at least one-half of his support from such individual for substantially all of the period which begins on the date of birth of such child.

[*See main edition for text of (9)*]

(e) Widow's insurance benefits

(1) The widow (as defined in section 416(c) of this title) and every surviving divorced wife (as defined in section 416(d) of this title) of an individual who died a fully insured individual, if such widow or such surviving divorced wife—

(A) is not married,

(B)(i) has attained age 60, or (ii) has attained age 50 but has not attained age 60 and is under a disability (as defined in section 423(d) of this title) which began before the end of the period specified in paragraph (4),

(C)(i) has filed application for widow's insurance benefits, or was entitled to wife's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which he died, and (I) has attained retirement age (as defined in section 416(*l*) of this title) or (II) is not entitled to benefits under subsection (a) of this section or section 423 of this title, or

(ii) was entitled, on the basis of such wages and self-employment income, to mother's insurance benefits for the month preceding the month in which she attained retirement age (as defined in section 416(*l*) of this title), and

(D) is not entitled to old-age insurance benefits or is entitled to old-age insurance benefits each of which is less than the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (2)) of such deceased individual,

shall be entitled to a widow's insurance benefit for each month, beginning with—

(E) if she satisfies subparagraph (B) by reason of clause (i) thereof, the first month in which she becomes so entitled to such insurance benefits, or

[1] See References in Text note below.

(F) if she satisfies subparagraph (B) by reason of clause (ii) thereof—

(i) the first month after her waiting period (as defined in paragraph (5)) in which she becomes so entitled to such insurance benefits, or

(ii) the first month during all of which she is under a disability and in which she becomes so entitled to such insurance benefits, but only if she was previously entitled to insurance benefits under this subsection on the basis of being under a disability and such first month occurs (I) in the period specified in paragraph (4) and (II) after the month in which a previous entitlement to such benefits on such basis terminated,

and ending with the month preceding the first month in which any of the following occurs: she remarries, dies, becomes entitled to an old-age insurance benefit equal to or exceeding the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (2)) of such deceased individual, or, if she became entitled to such benefits before she attained age 60, subject to section 423(e) of this title, the termination month (unless she attains retirement age (as defined in section 416(*l*) of this title) on or before the last day of such termination month). For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which her disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 422(c)(4)(A) of this title, the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which she engages or is determined able to engage in substantial gainful activity.

(2)(A) Except as provided in subsection (q) of this section, paragraph (7) of this subsection, and subparagraph (D) of this paragraph, such widow's insurance benefit for each month shall be equal to the primary insurance amount (as determined for purposes of this subsection after application of subparagraphs (B) and (C)) of such deceased individual.

(B)(i) For purposes of this subsection, in any case in which such deceased individual dies before attaining age 62 and section 415(a)(1) of this title (as in effect after December 1978) is applicable in determining such individual's primary insurance amount—

(I) such primary insurance amount shall be determined under the formula set forth in section 415(a)(1)(B)(i) and (ii) of this title which is applicable to individuals who initially become eligible for old-age insurance benefits in the second year after the year specified in clause (ii),

(II) the year specified in clause (ii) shall be substituted for the second calendar year specified in section 415(b)(3)(A)(ii)(I) of this title, and

(III) such primary insurance amount shall be increased under section 415(i) of this title as if it were the primary insurance amount referred to in section 415(i)(2)(A)(ii)(II) of this title, except that it shall be increased only for years beginning after the first year after the year specified in clause (ii).

(ii) The year specified in this clause is the earlier of—

(I) the year in which the deceased individual attained age 60, or would have attained age 60 had he lived to that age, or

(II) the second year preceding the year in which the widow or surviving divorced wife first meets the requirements of paragraph (1)(B) or the second year preceding the year in which the deceased individual died, whichever is later.

(iii) This subparagraph shall apply with respect to any benefit under this subsection only to the extent its application does not result in a primary insurance amount for purposes of this subsection which is less than the primary insurance amount otherwise determined for such deceased individual under section 415 of this title.

(C) If such deceased individual was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w) of this section, then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title and under section 415(i) of this title as if such individual were still alive in the case of an individual who has died) which he was receiving (or would upon application have received) for the month prior to the month in which he died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of subsection (w) of this section) the number of increment months shall include any month in the months of the calendar year in which he died, prior to the month in which he died, which satisfy the conditions in paragraph (2) of subsection (w) of this section.

(D) If the deceased individual (on the basis of whose wages and self-employment income a widow or surviving divorced wife is entitled to widow's insurance benefits under this subsection) was, at any time, entitled to an old-age insurance benefit which was reduced by reason of the application of subsection (q) of this section, the widow's insurance benefit of such widow or surviving divorced wife for any month shall, if the amount of the widow's insurance benefit of such widow or surviving divorced wife (as determined under subparagraph (A) and after application of subsection (q) of this section) is greater than—

(i) the amount of the old-age insurance benefit to which such deceased individual would

have been entitled (after application of subsection (q) of this section) for such month if such individual were still living and section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title were applied, where applicable, and

(ii) 82½ percent of the primary insurance amount (as determined without regard to subparagraph (C)) of such deceased individual,

be reduced to the amount referred to in clause (i), or (if greater) the amount referred to in clause (ii).

(3) For purposes of paragraph (1), if—

(A) a widow or surviving divorced wife marries after attaining age 60 (or after attaining age 50 if she was entitled before such marriage occurred to benefits based on disability under this subsection), or

(B) a disabled widow or disabled surviving divorced wife described in paragraph (1)(B)(ii) marries after attaining age 50,

such marriage shall be deemed not to have occurred.

(4) The period referred to in paragraph (1)(B)(ii), in the case of any widow or surviving divorced wife, is the period beginning with whichever of the following is the latest:

(A) the month in which occurred the death of the fully insured individual referred to in paragraph (1) on whose wages and self-employment income her benefits are or would be based, or

(B) the last month for which she was entitled to mother's insurance benefits on the basis of the wages and self-employment income of such individual, or

(C) the month in which a previous entitlement to widow's insurance benefits on the basis of such wages and self-employment income terminated because her disability had ceased,

and ending with the month before the month in which she attains age 60, or, if earlier, with the close of the eighty-fourth month following the month with which such period began.

(5) The waiting period referred to in paragraph (1)(F), in the case of any widow or surviving divorced wife, is the earliest period of five consecutive calendar months—

(A) throughout which she has been under a disability, and

(B) which begins not earlier than with whichever of the following is the later: (i) the first day of the seventeenth month before the month in which her application is filed, or (ii) the first day of the fifth month before the month in which the period specified in paragraph (4) begins.

(6) In the case of an individual entitled to monthly insurance benefits payable under this section for any month prior to January 1973 whose benefits were not redetermined under section 102(g) of the Social Security Amendments of 1972, such benefits shall not be redetermined pursuant to such section, but shall be increased pursuant to any general benefit increase (as defined in section 415(i)(3) of this title) or any increase in benefits made under or pursuant to section 415(i) of this title, including for this purpose the increase provided effective for March 1974, as though such redetermination had been made.

(7)(A) The amount of a widow's insurance benefit for each month as determined (after application of the provisions of subsections (q) and (k) of this section, paragraph (2)(D), and paragraph (3)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such widow (or surviving divorced wife) for such month which is based upon her earnings while in the service of the Federal Government or any State (or any political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day she was employed by such entity, such service did not constitute "employment" as defined in section 410 of this title for purposes of this subchapter. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

(B) For purposes of this paragraph, any periodic benefit which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly benefit (as determined by the Secretary) and such equivalent monthly benefit shall constitute a monthly periodic benefit for purposes of subparagraph (A). For purposes of this subparagraph, the term "periodic benefit" includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(f) Widower's insurance benefits

(1) The widower (as defined in section 416(g) of this title) and every surviving divorced husband (as defined in section 416(d) of this title) of an individual who died a fully insured individual, if such widower or such surviving divorced husband—

(A) is not married,

(B)(i) has attained age 60, or (ii) has attained age 50 but has not attained age 60 and is under a disability (as defined in section 423(d) of the title) which began before the end of the period specified in paragraph (5),

(C)(i) has filed application for widower's insurance benefits or was entitled to husband's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which she died, and (I) has attained retirement age (as defined in section 416(*l*) of this title) or (II) is not entitled to benefits under subsection (a) of this section or section 423 of this title, or

(ii) was entitled, on the basis of such wages and self-employment income, to father's insurance benefits for the month preceding the month in which he attained retirement age (as defined in section 416(*l*) of this title), and

(D) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (3)) of such deceased individual,

shall be entitled to a widower's insurance benefit for each month, beginning with—

(E) if he satisfies subparagraph (B) by reason of clause (i) thereof, the first month in which he becomes so entitled to such insurance benefits, or

(F) if he satisfies subparagraph (B) by reason of clause (ii) thereof—

(i) the first month after his waiting period (as defined in paragraph (6)) in which he becomes so entitled to such insurance benefits, or

(ii) the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was previously entitled to insurance benefits under this subsection on the basis of being under a disability and such first month occurs (I) in the period specified in paragraph (5) and (II) after the month in which a previous entitlement to such benefits on such basis terminated,

and ending with the month preceding the first month in which any of the following occurs: he remarries, dies, or becomes entitled to an old-age insurance benefit equal to or exceeding the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (3)) of such deceased individual, or, if he became entitled to such benefits before he attained age 60, subject to section 423(e) of this title, the termination month (unless he attains retirement age (as defined in section 416(*l*) of this title) on or before the last day of such termination month). For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 422(c)(4)(A) of this title, the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity.

(2)(A) The amount of a widower's insurance benefit for each month (as determined after application of the provisions of subsections (k) and (q) of this section, paragraph (3)(D), and paragraph (4)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such widower for such month which is based upon his earnings while in the service of the Federal Government or any State (or any political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day he was employed by such entity, such service did not constitute "employment" as defined in section 410 of this title for purposes of this subchapter. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

[*See main edition for text of (B)*]

(3)(A) Except as provided in subsection (q) of this section, paragraph (2) of this subsection, and subparagraph (D) of this paragraph, such widower's insurance benefit for each month shall be equal to the primary insurance amount (as determined for purposes of this subsection after application of subparagraphs (B) and (C)) of such deceased individual.

(B)(i) For purposes of this subsection, in any case in which such deceased individual dies before attaining age 62 and section 415(a)(1) of this title (as in effect after December 1978) is applicable in determining such individual's primary insurance amount—

(I) such primary insurance amount shall be determined under the formula set forth in section 415(a)(1)(B)(i) and (ii) of this title which is applicable to individuals who initially become eligible for old-age insurance benefits in the second year after the year specified in clause (ii),

(II) the year specified in clause (ii) shall be substituted for the second calendar year specified in section 415(b)(3)(A)(ii)(I) of this title, and

(III) such primary insurance amount shall be increased under section 415(i) of this title as if it were the primary insuranee amount referred to in section 415(i)(2)(A)(ii)(II) of this title, except that it shall be increased only for years beginning after the first year after the year specified in clause (ii).

(ii) The year specified in this clause is the earlier of—

(I) the year in which the deceased individual attained age 60, or would have attained age 60 had she lived to that age, or

(II) the second year preceding the year in which the widower or surviving divorced husband first meets the requirements of paragraph (1)(B) or the second year preceding the year in which the deceased individual died, whichever is later.

(iii) This subparagraph shall apply with respect to any benefit under this subsection only to the extent its application does not result in a primary insurance amount for purposes of this subsection which is less than the primary insurance amount otherwise determined for such deceased individual under section 415 of this title.

(C) If such deceased individual was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w) of this section, then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title and under section 415(i) of this title as if such individual were still alive in the case of an individual who has died) which she was receiving (or would upon application have received)

for the month prior to the month in which she died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of subsection (w) of this section) the number of increment months shall include any month in the months of the calendar year in which she died, prior to the month in which she died, which satisfy the conditions in paragraph (2) of subsection (w) of this section.

(D) If the deceased individual (on the basis of whose wages and self-employment income a widower or surviving divorced husband is entitled to widower's insurance benefits under this subsection) was, at any time, entitled to an old-age insurance benefit which was reduced by reason of the application of subsection (q) of this section, the widower's insurance benefit of such widower or surviving divorced husband for any month shall, if the amount of the widower's insurance benefit of such widower or surviving divorced husband (as determined under subparagraph (A) and after application of subsection (q) of this section) is greater than—

(i) the amount of the old-age insurance benefit to which such deceased individual would have been entitled (after application of subsection (q) of this section) for such month if such individual were still living and section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title were applied, where applicable; and

(ii) 82½ percent of the primary insurance amount (as determined without regard to subparagraph (C)) of such deceased individual;

be reduced to the amount referred to in clause (i), or (if greater) the amount referred to in clause (ii).

(4) For purposes of paragraph (1), if—

(A) a widower or surviving divorced husband marries after attaining age 60 (or after attaining age 50 if he was entitled before such marriage occurred to benefits based on disability under this subsection), or

(B) a disabled widower or surviving divorced husband described in paragraph (1)(B)(ii) marries after attaining age 50,

such marriage shall be deemed not to have occurred.

(5) The period referred to in paragraph (1)(B)(ii), in the case of any widower or surviving divorced husband, is the period beginning with whichever of the following is the latest:

(A) the month in which occurred the death of the fully insured individual referred to in paragraph (1) on whose wages and self-employment income his benefits are or would be based,

(B) the last month for which he was entitled to father's insurance benefits on the basis of the wages and self-employment income of such individual, or

(C) the month in which a previous entitlement to widower's insurance benefits on the basis of such wages and self-employment income terminated because his disability had ceased,

and ending with the month before the month in which he attains age 60, or, if earlier, with the close of the eighty-fourth month following the month with which such period began.

(6) The waiting period referred to in paragraph (1)(F), in the case of any widower or surviving divorced husband, is the earliest period of five consecutive calendar months—

(A) throughout which he has been under a disability, and

(B) which begins not earlier than with whichever of the following is the later: (i) the first day of the seventeenth month before the month in which his application is filed, or (ii) the first day of the fifth month before the month in which the period specified in paragraph (5) begins.

(7) In the case of an individual entitled to monthly insurance benefits payable under this section for any month prior to January 1973 whose benefits were not redetermined under section 102(g) of the Social Security Amendments of 1972, such benefits shall not be redetermined pursuant to such section, but shall be increased pursuant to any general benefit increase (as defined in section 415(i)(3) of this title) or any increase in benefits made under or pursuant to section 415(i) of this title, including for this purpose the increase provided effective for March 1974, as though such redetermination had been made.

(g) Mother's and father's insurance benefits

(1) The surviving spouse and every surviving divorced parent (as defined in section 416(d) of this title) of an individual who died a fully or currently insured individual, if such surviving spouse or surviving divorced parent—

(A) is not married,

(B) is not entitled to a surviving spouse's insurance benefit,

(C) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than three-fourths of the primary insurance amount of such individual,

(D) has filed application for mother's or father's insurance benefits, or was entitled to a spouse's insurance benefit on the basis of the wages and self-employment income of such individual for the month preceding the month in which such individual died,

(E) at the time of filing such application has in his or her care a child or such individual entitled to a child's insurance benefit, and

(F) in the case of a surviving divorced parent—

(i) the child referred to in subparagraph (E) is his or her son, daughter, or legally adopted child, and

(ii) the benefits referred to in such subparagraph are payable on the basis of such individual's wages and self-employment income,

shall (subject to subsection (s) of this section) be entitled to a mother's or father's insurance benefit for each month, beginning with the first month in which he or she becomes so entitled to such insurance benefits and ending with the month preceding the first month in which any of the following occurs: no child of such deceased individual is entitled to a child's insurance benefit, such surviving spouse or surviving divorced parent becomes entitled to an old-age

insurance benefit equal to or exceeding three-fourths of the primary insurance amount of such deceased individual, he or she becomes entitled to a surviving spouse's insurance benefit, he or she remarries, or he or she dies. Entitlement to such benefits shall also end, in the case of a surviving divorced parent, with the month immediately preceding the first month in which no son, daughter, or legally adopted child of such surviving divorced parent is entitled to a child's insurance benefit on the basis of the wages and self-employment income of such deceased individual.

(2) Except as provided in paragraph (4) of this subsection, such mother's or father's insurance benefit for each month shall be equal to three-fourths of the primary insurance amount of such deceased individual.

(3) In the case of a surviving spouse or surviving divorced parent who marries—

(A) an individual entitled to benefits under this subsection or subsection (a), (b), (c), (e), (f), or (h) of this section, or under section 423(a) of this title, or

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d) of this section,

the entitlement of such surviving spouse or surviving divorced parent to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) of this subseetion but subject to subsection (s) of this section, not be terminated by reason of such marriage.

(4)(A) The amount of a mother's or father's insurance benefit for each month to which any individual is entitled under this subsection (as determined after application of subsection (k) of this section) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such individual for such month which is based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day such individual was employed by such entity, such service did not constitute "employment" as defined in section 410 of this title for purposes of this subchapter. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

[*See main edition for text of (B)*]

(h) Parent's insurance benefits

[*See main edition for text of (1) to (3)*]

(4) In the case of a parent who marries—

(A) an individual entitled to benefits under this subsection or subsection (b), (c), (e), (f), or (g) of this section, or

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d) of this section,

such parent's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) of this subsection but subject to subsection (s) of this section, not be terminated by reason of such marriage.

[*See main edition for text of (i)*]

(j) Application for monthly insurance benefits

[*See main edition for text of (1) to (3)*]

(4) [*See main edition for text of (A)*]

(B) [*See main edition for text of (i) and (ii)*]

(iii) Subparagraph (A) docs not apply to a benefit under subsection (e) or (f) of this section for the month immediately preceding the month of application, if the insured individual died in that preceding month.

(iv) If the individual applying for retroactive benefits has excess earnings (as defined in section 403(f) of this title) in the year in which he or she files an application for such benefits which could, except for subparagraph (A), be charged to months in such year prior to the month of application, then subparagraph (A) shall not apply to so many of such months immediately preceding the month of application as are required to charge such excess earnings to the maximum extent possible.

(v) As used in this subparagraph, the term "retroactive benefits" means benefits to which an individual becomes entitled for a month prior to the month in which application for such benefits is filed.

(k) Simultaneous entitlement to benefits

[*See main edition for text of (1)*]

(2) [*See main edition for text of (A)*]

(B) Any individual (other than an individual to whom subsection (e)(3) or (f)(4) of this section applies) who, under the preceding provisions of this section and under the provisions of section 423 of this title, is entitled for any month to more than one monthly insurance benefit (other than an old-age or disability insurance benefit) under this subchapter shall be entitled to only one such monthly benefit for such month, such benefit to be the largest of the monthly benefits to which he (but for this subparagraph) would otherwise be entitled for such month. Any individual who is entitled for any month to more than one widow's or widower's insurance benefit to which subsection (e)(3) or (f)(4) of this section applies shall be entitled to only one such benefit for such month, such benefit to be the largest of such benefits.

(3) [*See main edition for text of (A)*]

(B) If an individual is entitled for any month to a widow's or widower's insurance benefit to which subsection (e)(3) or (f)(4) of this section applies and to any other monthly insurance benefit under this section (other than an old-age insurance benefit), such other insurance benefit for such month, after any reduction under subparagraph (A) of this paragraph, any reduction under subsection (q) of this section, and any reduction under section 403(a) of this title, shall be reduced, but not below zero, by an amount equal to such widow's or widower's insurance benefit after any reduction or reductions under such subparagraph (A) and such section 403(a).

[*See main edition for text of (4); (l) to (p)*]

(q) Reduction of benefit amounts for certain beneficiaries

(1) Subject to paragraph (9), if the first month for which an individual is entitled to an old-age, wife's, husband's, widow's, or widower's insurance benefit is a month before the month in which such individual attains retirement age, the amount of such benefit for such month and for any subsequent month shall, subject to the succeeding paragraphs of this subsection, be reduced by—

[*See main edition for text of (A)*]

(B)(i) the number of months in the reduction period for such benefit (determined under paragraph (6)), if such benefit is for a month before the month in which such individual attains retirement age, or

(ii) if less, the number of such months in the adjusted reduction period for such benefit (determined under paragraph (7)), if such benefit is (I) for the month in which such individual attains age 62, or (II) for the month in which such individual attains retirement age.

(2) If an individual is entitled to a disability insurance benefit for a month after a month for which such individual was entitled to an old-age insurance benefit, such disability insurance benefit for each month shall be reduced by the amount such old-age insurance benefit would be reduced under paragraphs (1) and (4) for such month had such individual attained retirement age (as defined in section 416(*l*) of this title) in the first month for which he most recently became entitled to a disability insurance benefit.

(3)(A) If the first month for which an individual both is entitled to a wife's, husband's, widow's, or widower's insurance benefit and has attained age 62 (in the case of a wife's or husband's insurance benefit) or age 50 (in the case of a widow's or widower's insurance benefit) is a month for which such individual is also entitled to—

(i) an old-age insurance benefit (to which such individual was first entitled for a month before he attains retirement age (as defined in section 416(*l*) of this title)), or

(ii) a disability insurance benefit,

then in lieu of any reduction under paragraph (1) (but subject to the succeeding paragraphs of this subsection) such wife's, husband's, widow's, or widower's insurance benefit for each month shall be reduced as provided in subparagraph (B), (C), or (D).

[*See main edition for text of (B) to (D)*]

(E) If the first month for which an individual is entitled to an old-age insurance benefit (whether such first month occurs before, with, or after the month in which such individual attains retirement age (as defined in section 416(*l*) of this title)) is a month for which such individual is also (or would, but for subsection (e)(1) of this section in the case of a widow or surviving divorced wife or subsection (f)(1) of this section in the case of a widower or surviving divorced husband, be) entitled to a widow's or widower's insurance benefit to which such individual was first entitled for a month before she or he attained retirement age, then such old-age insurance benefit shall be reduced by whichever of the following is the larger:

(i) the amount by which (but for this subparagraph) such old-age insurance benefit would have been reduced under paragraph (1), or

(ii) the amount equal to the sum of (I) the amount by which such widow's or widower's insurance benefit would be reduced under paragraph (1) if the period specified in paragraph (6) ended with the month before the month in which she or he attained age 62 and (II) the amount by which such old-age insurance benefit would be reduced under paragraph (1) if it were equal to the excess of such old-age insurance benefit (before reduction under this subsection) over such widow's or widower's insurance benefit (before reduction under this subsection).

(F) If the first month for which an individual is entitled to a disability insurance benefit (when such first month occurs with or after the month in which such individual attains the age of 62) is a month for which such individual is also (or would, but for subsection (e)(1) of this section in the case of a widow or surviving divorced wife or subsection (f)(1) of this section in the case of a widower or surviving divorced husband, be) entitled to a widow's or widower's insurance benefit to which such individual was first entitled for a month before she or he attained retirement age, then such disability insurance benefit for each month shall be reduced by whichever of the following is larger:

(i) the amount by which (but for this subparagraph) such disability insurance benefit would have been reduced under paragraph (2), or

(ii) the amount equal to the sum of (I) the amount by which such widow's or widower's insurance benefit would be reduced under paragraph (1) if the period specified in paragraph (6) ended with the month before the month in which she or he attained age 62 and (II) the amount by which such disability insurance benefit would be reduced under paragraph (2) if it were equal to the excess of such disability insurance benefit (before reduction under this subsection) over such widow's or widower's insurance benefit (before reduction under this subsection).

(G) If the first month for which an individual is entitled to a disability insurance benefit (when such first month occurs before the month in which such individual attains the age of 62) is a month for which such individual is also (or would, but for subsection (e)(1) of this section in the case of a widow or surviving divorced wife or subsection (f)(1) of this section in the case of a widower or surviving divorced husband, be) entitled to a widow's or widower's insurance benefit, then such disability insurance benefit for each month shall be reduced by the amount such widow's or widower's insurance benefit would be reduced under paragraphs (1) and (4) for such month if the period

specified in paragraph (6) ended with the month before the first month for which she or he most recently became entitled to a disability insurance benefit.

[*See main edition for text of (H), (4)*]

(5)(A) No wife's or husband's insurance benefit shall be reduced under this subsection—

(i) for any month before the first month for which there is in effect a certificate filed by him or her with the Secretary, in accordance with regulations prescribed by the Secretary, in which he or she elects to receive wife's or husband's insurance benefits reduced as provided in this subsection, or

(ii) for any month in which he or she has in his or her care (individually or jointly with the person on whose wages and self-employment income the wife's or husband's insurance benefit is based) a child of such person entitled to child's insurance benefits.

(B) Any certificate described in subparagraph (A)(i) shall be effective for purposes of this subsection (and for purposes of preventing deductions under section 403(c)(2) of this title)—

(i) for the month in which it is filed and for any month thereafter, and

(ii) for months, in the period designated by the individual filing such certificate, of one or more consecutive months (not exceeding 12) immediately preceding the month in which such certificate is filed;

except that such certificate shall not be effective for any month before the month in which he or she attains age 62, nor shall it be effective for any month to which subparagraph (A)(ii) applies.

(C) If an individual does not have in his or her care a child described in subparagraph (A)(ii) in the first month for which he or she is entitled to a wife's or husband's insurance benefit, and if such first month is a month before the month in which he or she attains retirement age (as defined in section 416(*l*) of this title), he or she shall be deemed to have filed in such first month the certificate described in subparagraph (A)(i).

(D) No widow's or widower's insurance benefit for a month in which he or she has in his or her care a child of his or her deceased spouse (or deceased former spouse) entitled to child's insurance benefits shall be reduced under this subsection below the amount to which he or she would have been entitled had he or she been entitled for such month to mother's or father's insurance benefits on the basis of his or her deceased spouse's (or deceased former spouse's) wages and self-employment income.

(6) For purposes of this subsection, the "reduction period" for an individual's old-age, wife's, husband's, widow's, or widower's insurance benefit is the period—

(A) beginning—

(i) in the case of an old-age insurance benefit, with the first day of the first month for which such individual is entitled to such benefit,

(ii) in the case of a wife's or husband's insurance benefit, with the first day of the first month for which a certificate described in paragraph (5)(A)(i) is effective, or

(iii) in the case of a widow's or widower's insurance benefit, with the first day of the first month for which such individual is entitled to such benefit or the first day of the month in which such individual attains age 60, whichever is the later, and

(B) ending with the last day of the month before the month in which such individual attains retirement age.

(7) For purposes of this subsection, the "adjusted reduction period" for an individual's old-age, wife's, husband's, widow's, or widower's insurance benefit is the reduction period prescribed in paragraph (6) for such benefit, excluding—

(A) any month in which such benefit was subject to deductions under section 403(b), 403(c)(1), 403(d)(1), or 422(b) of this title,

(B) in the case of wife's or husband's insurance benefits, any month in which such individual had in his or her care (individually or jointly with the person on whose wages and self-employment income such benefit is based) a child of such person entitled to child's insurance benefits,

[*See main edition for text of (C)*]

(D) in the case of widow's or widower's insurance benefits, any month in which the reduction in the amount of such benefit was determined under paragraph (5)(D),

(E) in the case of widow's or widower's insurance benefits, any month before the month in which she or he attained age 62, and also for any later month before the month in which she or he attained retirement age, for which she or he was not entitled to such benefit because of the occurrence of an event that terminated her or his entitlement to such benefits, and

[*See main edition for text of (F), (8)*]

(9) The amount of the reduction for early retirement specified in parargaph (1)—

(A) for old-age insurance benefits, wife's insurance benefits, and husband's insurance benefits, shall be the amount specified in such paragraph for the first 36 months of the reduction period (as defined in paragraph (6)) or adjusted reduction period (as defined in paragraph (7)), and five-twelfths of 1 percent for any additional months included in such periods; and

(B) for widow's insurance benefits and widower's insurance benefits, shall be periodically revised by the Secretary such that—

(i) the amount of the reduction at early retirement age as defined in section 416(*l*) of this title shall be 28.5 percent of the full benefit; and

(ii) the amount of the reduction for each month in the reduction period (specified in paragraph (6)) or the adjusted reduction period (specified in paragraph (7)) shall be established by linear interpolation between 28.5 percent at the month of attainment of early retirement age and 0 percent at the month of attainment of retirement age.

(10) For purposes of applying paragraph (4), with respect to monthly benefits payable for any month after December 1977 to an individual who was entitled to a monthly benefit as reduced under paragraph (1) or (3) prior to January 1978, the amount of reduction in such benefit for the first month for which such benefit is increased by reason of an increase in the primary insurance amount of the individual on whose wages and self-employment income such benefit is based and for all subsequent months (and similarly for all subsequent increases) shall be increased by a percentage equal to the percentage increase in such primary insurance amount (such increase being made in accordance with the provisions of paragraph (8)). In the case of an individual whose reduced benefit under this section is increased as a result of the use of an adjusted reduction period (in accordance with paragraphs (1) and (3) of this subsection), then for the first month for which such increase is effective, and for all subsequent months, the amount of such reduction (after the application of the previous sentence, if applicable) shall be determined—

[*See main edition for text of* (*A*)]

(B) in the case of widow's and widower's insurance benefits for the month in which such individual attains age 62, by multiplying such amount by the ratio of (i) the number of months in the reduction period beginning with age 62 multiplied by ¹⁹⁄₂₄ of 1 percent, plus the number of months in the adjusted reduction period prior to age 62 multiplied by ¹⁹⁄₂₄ of 1 percent to (ii) the number of months in the reduction period multiplied by ¹⁹⁄₂₄ of 1 percent, and

(C) in the case of widow's and widower's insurance benefits for the month in which such individual attains retirement age (as defined in section 416(*l*) of this title), by multiplying such amount by the ratio of (i) the number of months in the adjusted reduction period multiplied by ¹⁹⁄₂₄ of 1 percent to (ii) the number of months in the reduction period beginning with age 62 multiplied by ¹⁹⁄₂₄ of 1 percent, plus the number of months in the adjusted reduction period prior to age 62 multiplied by ¹⁹⁄₂₄ of 1 percent,

such determination being made in accordance with the provisions of paragraph (8).

[*See main edition for text of* (*11*)]

(r) Presumed filing of application by individuals eligible for old-age insurance benefits and for wife's or husband's insurance benefits

(1) If the first month for which an individual is entitled to an old-age insurance benefit is a month before the month in which such individual attains retirement age (as defined in section 416(*l*) of this title), and if such individual is eligible for a wife's or husband's insurance benefit for such first month, such individual shall be deemed to have filed an application in such month for wife's or husband's insurance benefits.

(2) If the first month for which an individual is entitled to a wife's or husband's insurance benefit reduced under subsection (q) of this section is a month before the month in which such individual attains retirement age (as defined in section 416(*l*) of this title), and if such individual is eligible (but for subsection (k)(4) of this section) for an old-age insurance benefit for such first month, such individual shall be deemed to have filed an application for old-age insurance benefits—

[*See main edition for text of* (*A*) *and* (*B*), (*3*)]

(s) Child over specified age to be disregarded for certain benefit purposes unless disabled

(1) For the purposes of subsections (b)(1), (c)(1), (g)(1), (q)(5), and (q)(7) of this section and paragraphs (2), (3), and (4) of section 403(c) of this title, a child who is entitled to child's insurance benefits under subsection (d) of this section for any month, and who has attained the age of 16 but is not in such month under a disability (as defined in section 423(d) of this title), shall be deemed not entitled to such benefits for such month, unless he was under such a disability in the third month before such month.

(2) So much of subsections (b)(3), (c)(4), (d)(5), (g)(3), and (h)(4) of this section as precedes the semicolon, shall not apply in the case of any child unless such child, at the time of the marriage referred to therein, was under a disability (as defined in section 423(d) of this title) or had been under such a disability in the third month before the month in which such marriage occurred.

(3) The last sentence of subsection (c) of section 403 of this title, subsection (f)(1)(C) of section 403 of this title, and subsections (b)(3)(B), (c)(6)(B), (f)(3)(B), and (g)(6)(B) of section 416 of this title shall not apply in the case of any child with respect to any month referred to therein unless in such month or the third month prior thereto such child was under a disability (as defined in section 423(d) of this title).

(t) Suspension of benefits of aliens who are outside the United States; residency requirements for dependents and survivors

[*See main edition for text of* (*1*)]

(2) Subject to paragraph (11), paragraph (1) of this subsection shall not apply to any individual who is a citizen of a foreign country which the Secretary finds has in effect a social insurance or pension system which is of general application in such country and under which—

[*See main edition for text of* (*A*) *and* (*B*), (*3*)]

(4) Subject to paragraph (11), paragraph (1) of this subsection shall not apply to any benefit for any month if—

[*See main edition for text of* (*A*) *to* (*D*)]

(E) the individual on whose employment such benefit is based had been in service covered by the Railroad Retirement Act of 1937 or 1974 [45 U.S.C. 228a et seq., 231 et seq.] which was treated as employment covered by this chapter pursuant to the provisions of section 5(k)(1) of the Railroad Retirement Act of

1937 [45 U.S.C. 228e(k)(1)] or section 18(2) of the Railroad Retirement Act of 1974 [45 U.S.C. 231q(2)];

except that subparagraphs (A) and (B) of this paragraph shall not apply in the case of any individual who is a citizen of a foreign country that has in effect a social insurance or pension system which is of general application in such country and which satisfies subparagraph (A) but not subparagraph (B) of paragraph (2), or who is a citizen of a foreign country that has no social insurance or pension system of general application if at any time within five years prior to the month in which the Social Security Amendments of 1967 are enacted (or the first month thereafter for which his benefits are subject to suspension under paragraph (i)) payments to individuals residing in such country were withheld by the Treasury Department under sections 3329(a) and 3330(a) of title 31.

[*See main edition for text of (5) to (10)*]

(11)(A) Paragraph (2) and subparagraphs (A), (B), (C), and (E) of paragraph (4) shall apply with respect to an individual's monthly benefits under subsection (b), (c), (d), (e), (f), (g), or (h) of this section only if such individual meets the residency requirements of this paragraph with respect to those benefits.

(B) An individual entitled to benefits under subsection (b), (c), (e), (f), or (g) of this section meets the residency requirements of this paragraph with respect to those benefits only if such individual has resided in the United States, and while so residing bore a spousal relationship to the person on whose wages and self-employment income such entitlement is based, for a total period of not less than 5 years. For purposes of this subparagraph, a period of time for which an individual bears a spousal relationship to another person consists of a period throughout which the individual has been, with respect to such other person, a wife, a husband, a widow, a widower, a divorced wife, a divorced husband, a surviving divorced wife, a surviving divorced husband, a surviving divorced mother, a surviving divorced father, or (as applicable in the course of such period) any two or more of the foregoing.

(C) An individual entitled to benefits under subsection (d) of this section meets the residency requirements of this paragraph with respect to those benefits only if—

(i)(I) such individual has resided in the United States (as the child of the person on whose wages and self-employment income such entitlement is based) for a total period of not less than 5 years, or

(II) the person on whose wages and self-employment income such entitlement is based, and the individual's other parent (within the meaning of subsection (h)(3) of this section), if any, have each resided in the United States for a total period of not less than 5 years (or died while residing in the United States), and

(ii) in the case of an individual entitled to such benefits as an adopted child, such individual was adopted within the United States by the person on whose wages and self-employment income such entitlement is based, and has lived in the United States with such person and received at least one-half of his or her support from such person for a period (beginning before such individual attained age 18) consisting of—

(I) the year immediately before the month in which such person became eligible for old-age insurance benefits or disability insurance benefits or died, whichever occurred first, or

(II) if such person had a period of disability which continued until he or she became entitled to old-age insurance benefits or disability insurance benefits or died, the year immediately before the month in which such period of disability began.

(D) An individual entitled to benefits under subsection (h) of this section meets the residency requirements of this paragraph with respect to those benefits only if such individual has resided in the United States, and while so residing was a parent (within the meaning of subsection (h)(3) of this section) of the person on whose wages and self-employment income such entitlement is based, for a total period of not less than 5 years.

(E) This paragraph shall not apply with respect to any individual who is a citizen or resident of a foreign country with which the United States has an agreement in force concluded pursuant to section 433 of this title, except to the extent provided by such agreement.

(u) Conviction of subversive activities, etc.

(1) If any individual is convicted of any offense (committed after August 1, 1956) under—

(A) chapter 37 (relating to espionage and censorship), chapter 105 (relating to sabotage), or chapter 115 (relating to treason, sedition, and subversive activities) of title 18, or

(B) section 783 of title 50,

then the court may, in addition to all other penalties provided by law, impose a penalty that in determining whether any monthly insurance benefit under this section or section 423 of this title is payable to such individual for the month in which he is convicted or for any month thereafter, in determining the amount of any such benefit payable to such individual for any such month, and in determining whether such individual is entitled to insurance benefits under part A of subchapter XVIII of this chapter for any such month, there shall not be taken into account—

[*See main edition for text of (C) and (D), (2) and (3)*]

(v) Waiver of benefits

Notwithstanding any other provisions of this subchapter, in the case of any individual who files a waiver pursuant to section 1402(g) of the Internal Revenue Code of 1986 and is granted a tax exemption thereunder, no benefits or other payments shall be payable under this subchapter to him, no payments shall be made on his behalf under part A of subchapter XVIII of this chapter, and no benefits or other payments under this subchapter shall be payable on the

basis of his wages and self-employment income to any other person, after the filing of such waiver; except that, if thereafter such individual's tax exemption under such section 1402(g) ceases to be effective, such waiver shall cease to be applicable in the case of benefits and other payments under this subchapter and part A of subchapter XVIII of this chapter to the extent based on his self-employment income for and after the first taxable year for which such tax exemption ceases to be effective and on his wages for and after the calendar year (if any) which begins in or with the beginning of such taxable year.

(w) Increase in old-age insurance benefit amounts on account of delayed retirement

(1) The amount of an old-age insurance benefit (other than a benefit based on a primary insurance amount determined under section 415(a)(3) of this title as in effect in December 1978 or section 415(a)(1)(C)(i) of this title as in effect thereafter) which is payable without regard to this subsection to an individual shall be increased by—

(A) the applicable percentage (as determined under paragraph (6)) of such amount, multiplied by

(B) the number (if any) of the increment months for such individual.

(2) For purposes of this subsection, the number of increment months for any individual shall be a number equal to the total number of the months—

(A) which have elapsed after the month before the month in which such individual attained retirement age (as defined in section 416(*l*) of this title) or (if later) December 1970 and prior to the month in which such individual attained age 70, and

[*See main edition for text of* (*B*)]

(3) For purposes of applying the provisions of paragraph (1), a determination shall be made under paragraph (2) for each year, beginning with 1972, of the total number of an individual's increment months through the year for which the determination is made and the total so determined shall be applicable to such individual's old-age insurance benefits beginning with benefits for January of the year following the year for which such determination is made; except that the total number applicable in the case of an individual who attains age 70 after 1972 shall be determined through the month before the month in which he attains such age and shall be applicable to his old-age insurance benefit beginning with the month in which he attains such age.

[*See main edition for text of* (*4*) *and* (*5*)]

(6) For purposes of paragraph (1)(A), the "applicable percentage" is—

(A) ½ of 1 percent in the case of an individual who first becomes eligible for an old-age insurance benefit in any calendar year before 1979;

(B) ¼ of 1 percent in the case of an individual who first becomes eligible for an old-age insurance benefit in any calendar year after 1978 and before 1987;

(C) in the case of an individual who first becomes eligible for an old-age insurance benefit in a calendar year after 1986 and before 2005, a percentage equal to the applicable percentage in effect under this paragraph for persons who first became eligible for an old-age insurance benefit in the preceding calendar year (as increased pursuant to this subparagraph), plus ¼ of 1 percent if the calendar year in which that particular individual first becomes eligible for such benefit is not evenly divisible by 2; and

(D) ⅜ of 1 percent in the case of an individual who first becomes eligible for an old-age insurance benefit in a calendar year after 2004.

(x) Limitation on payments to prisoners

(1) Notwithstanding any other provision of this subchapter, no monthly benefits shall be paid under this section or under section 423 of this title to any individual for any month during which such individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to his conviction of an offense which constituted a felony under applicable law, unless such individual is actively and satisfactorily participating in a rehabilitation program which has been specifically approved for such individual by a court of law and, as determined by the Secretary, is expected to result in such individual being able to engage in substantial gainful activity upon release and within a reasonable time.

(2) Benefits which would be payable to any individual (other than a confined individual to whom benefits are not payable by reason of paragraph (1)) under this subchapter on the basis of the wages and self-employment income of such a confined individual but for the provisions of paragraph (1), shall be payable as though such confined individual were receiving such benefits under this section or section 423 of this title.

(3) Notwithstanding the provisions of section 552a of title 5 or any other provision of Federal or State law, any agency of the United States Government or of any State (or political subdivision thereof) shall make available to the Secretary, upon written request, the name and social security account number of any individual who is confined in a jail, prison, or other penal institution or correctional facility under the jurisdiction of such agency, pursuant to his conviction of an offense which constituted a felony under applicable law, which the Secretary may require to carry out the provisions of this subsection.

(Aug. 14, 1935, ch. 531, title II, § 202, 49 Stat. 623; Aug. 10, 1939, ch. 666, title II, § 201, 53 Stat. 1362, 1363; Aug. 10, 1946, ch. 951, title IV, §§ 402, 403(a), 404(a), 405(a), 60 Stat. 986, 987; Aug. 28, 1950, ch. 809, title I, § 101(a), 64 Stat. 482; Aug. 14, 1953, ch. 483, § 2, 67 Stat. 580; Sept. 1, 1954, ch. 1206, title I, §§ 102(i), 105(a), 107, 110, 68 Stat. 1073, 1079, 1083, 1085; Aug. 9, 1955, ch. 685, § 2, 69 Stat. 621; Aug. 1, 1956, ch. 836, title I, §§ 101(a)-(c), 102(e), (d)(1)-(10), 103(c)(1)-(3), 113, 114(a), 118(a), 121(a), 70 Stat. 807, 810-814, 818, 831, 832, 835, 838; Aug. 1,

1956, ch. 837, title IV, §§ 403(a), 407, 70 Stat. 871, 876; Aug. 30, 1957, Pub. L. 85-238, §§ 1, 3(a)-(g), 71 Stat. 518; Aug. 28, 1958, Pub. L. 85-798, § 1, 72 Stat. 964; Aug. 28, 1958, Pub. L. 85-840, title I, § 101(e), title II, § 205(b)-(i), title III, §§ 301(a)(1), (b)(1), (c)(1), 303, 304(a)(1), 305(a), 306(a), 307(a)-(e), 72 Stat. 1017, 1021-1024, 1026, 1027, 1029-1032; Sept. 2, 1958, Pub. L. 85-857, § 13(i)(1), 72 Stat. 1265; Sept. 6, 1958, Pub. L. 85-927, § 301, 72 Stat. 1783; June 25, 1959, Pub. L. 86-70, § 32(c)(1), 73 Stat. 149; July 12, 1960, Pub. L. 86-624, § 30(c)(1), 74 Stat. 420; Sept. 13, 1960, Pub. L. 86-778, title I, § 103(a)(1), (j)(2)(C), (D), title II, §§ 201(a), (b), 202(a), 203(a), 205(a), (b), 208(d), 211(i)-(*l*), title III, § 301(a), title IV, § 403(d), 74 Stat. 936, 937, 946, 947, 949, 952, 957-959, 1969; June 30, 1961, Pub. L. 87-64, title I, §§ 102(a), (b)(1), (2)(A), (3), (e), 104(a)-(d), 75 Stat. 131, 134-136, 138, 139; July 30, 1965, Pub. L. 89-97, title I, § 104(a), title III, §§ 303(d), 304(a)-(j), 306(a), (b), (c)(1)-(9), 307(a), (b), 308(a), (b), (d)(1), (2)(A), (3)-(5), (12), (13), 319(d), 323(a), 324(a), 328(a), 333(a)-(c), 334(e), (f), 339(b), 343(a), 79 Stat. 334, 367-379, 392, 397, 398, 400, 403-405, 410, 412; Jan. 2, 1968, Pub. L. 90-248, title I, §§ 103(a)-(d), 104(a)-(c), 112(a), 151(a)-(d)(1), (2), 157(a), (b), 158(c)(1), (2), 162(a)(1), (b)(1), (c)(1), (2), 81 Stat. 828-830, 838, 860, 867, 868, 871; Dec. 30, 1969, Pub. L. 91-172, title X, § 1004(a)-(c), 83 Stat. 741; Dec. 28, 1971, Pub. L. 92-223, § 1, 85 Stat. 802; Oct. 30, 1972, Pub. L. 92-603, title I, §§ 102(a), (b), (d)-(f), 103(a), (b), 107(a), 108(a)-(e), 109(a), 110(a), 111(a), 112(a), 113(b), 114(a)-(c), 116(b), (c), 86 Stat. 1335, 1336, 1338-1340, 1343-1348, 1350; July 9, 1973, Pub. L. 93-66, title II, § 240(a), 87 Stat. 161; Dec. 31, 1973, Pub. L. 93-233, §§ 1(f), (g), 18(b), 87 Stat. 947, 948, 967; Oct. 16, 1974, Pub. L. 93-445, title III, § 301, 88 Stat. 1357; Dec. 20, 1977, Pub. L. 95-216, title II, §§ 203, 204(a)-(d), 205(a), (b), title III, §§ 331(a)-(c), 332(a)(1), (2), 334(a)-(d)(4)(A), (5), (6), (e), 336(a), (b), 337(b), 353(f)(1), 91 Stat. 1527-1529, 1541-1548, 1554; Nov. 6, 1978, Pub. L. 95-600, title VII, § 703(j)(14)(A), 92 Stat. 2942; June 9, 1980, Pub. L. 96-265, title III, §§ 303(b)(1)(B)-(D), 306(a), 94 Stat. 451, 452, 457; Oct. 19, 1980, Pub. L. 96-473, §§ 5(b), 6(a), 94 Stat. 2265; Dec. 5, 1980, Pub. L. 96-499, title X, § 1011(a), 94 Stat. 2655; Aug. 13, 1981, Pub. L. 97-35, title XXII, §§ 2201(b)(10), (11), (d), (f), 2202(a)(1), 2203(a), (b)(1), (c)(1), (d)(1), (2), 2205(a), 2206(b)(1), 2210(a), 95 Stat. 831-838, 841; Dec. 29, 1981, Pub. L. 97-123, § 2(e), 95 Stat. 1660; Jan. 12, 1983, Pub. L. 97-455, § 7(c), 96 Stat. 2501; Apr. 20, 1983, Pub. L. 98-21, title I, §§ 111(a)(7), 113(d), 114(a)-(c)(1), 131(a)(1)-(3)(G), (b)(1)-(3)(F), (c), 132(a), 133(a), (b), 134(a), (b), title II, § 201(b), (c)(1)(A), title III, §§ 301(a), (b)(1), (2), (4), (6), (7), 302, 306(a), (d)-(h), 307(a), 309(a)-(e), 334(a), 337(a), 339(a), 340(a)(2), (b), 97 Stat. 72, 79, 92, 93, 95-98, 108, 111-116, 130, 131, 133-135; July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2661(b)-(e), 2662(c)(1), 2663(a)(2), 98 Stat. 1156, 1159, 1160; Apr. 7, 1986, Pub. L. 99-272, title XII, §§ 12104(a), 12107(a), 100 Stat. 285, 286; Oct. 22, 1986, Pub. L. 99-514, § 2, title XVIII, § 1883(a)(1)-(3), 100 Stat. 2095, 2916.)

REFERENCES IN TEXT

The effective date of this sentence, referred to in subsec. (d)(7)(A), is the effective date of section 5 of Pub. L. 96-473, which added such sentence effective with respect to benefits payable for months beginning on or after October 1, 1980. See Effective Date of 1980 Amendments note below.

Section 102(g) of the Social Security Amendments of 1972, referred to in subsecs. (e)(6) and (f)(7), is section 102(g) of Pub. L. 92-603, Oct. 30, 1972, 86 Stat. 1329, which is set out as a Redetermination of Widow's and Widower's Benefits note under this section.

The Railroad Retirement Act of 1937, referred to in subsec. (t)(4)(E), is act Aug. 29, 1935, ch. 812, 49 Stat. 867, as amended generally. See par. for Railroad Retirement Act of 1974 below.

The Railroad Retirement Act of 1974, referred te in subsec. (t)(4)(E), is title I of Pub. L. 93-445, Oct. 16, 1974, 88 Stat. 1305, and is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. Such title I completely amended and revised the Railroad Retirement Act of 1937 (approved June 24, 1937, ch. 382, 50 Stat. 307), and as thus amended and revised, the 1937 Act was redesignated the Railroad Retirement Act of 1974. Previously, the 1937 Act had completely amended and revised the Railroad Retirement Act of 1935 (approved Aug. 29, 1935, ch. 812, 49 Stat. 987). Section 201 of the 1937 Act provided that the 1935 Act, as in force prior to amendment by the 1937 Act, may be cited as the Railroad Retirement Act of 1935; and that the 1935 Act, as amended by the 1937 Act may be cited as the Railroad Retirement Act of 1937. The Railroad Retirement Acts of 1935 and 1937 were classified to subchapter II (§ 215 et seq.) and subchapter III (§ 228a et seq.), respectively, of chapter 9 of Title 45. For complete classification of these Acts to the Code, see Tables.

Part A of subchapter XVIII of this subchapter, referred to in subsecs. (t)(9), (u)(1), and (v), is classified to section 1395c et seq. of this title.

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

AMENDMENTS

1986—Subsec. (c)(5)(B). Pub. L. 99-514, § 1883(a)(1), substituted "or (J)" for "or (I)".

Subsec. (d)(6)(E). Pub. L. 99-272, § 12107(a), substituted "the termination month (as defined in paragraph (1)(G)(i)), subject to section 423(e) of this title," for "the third month following the month in which he ceases to be under such disability".

Subsec. (d)(8)(D)(ii)(III). Pub. L. 99-272, § 12104(a), inserted "or great-grandchild" after "grandchild".

Subsec. (q)(5)(A)(i). Pub. L. 99-514, § 1883(a)(2), substituted "prescribed by the Secretary" for "prescribed by him".

Subsec. (q)(5)(C). Pub. L. 99-514, § 1883(a)(3), which directed substitution of "he or she shall be deemed" for "she shall be deemed" was not executed because of prior amendment substituting "he or she" for "she" by Pub. L. 98-21, § 309(c)(4). See 1983 Amendment note below.

Subsec. (v). Pub. L. 99-514, § 2, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1984—Subsec. (a). Pub. L. 98-369, § 2662(c)(1), made a clarifying amendment to Pub. L. 98-21, § 201(c)(1)(A). See 1983 Amendment note below.

Subsec. (c)(1). Pub. L. 98-369, § 2661(b)(1)(A), (B), substituted "retirement age (as defined in section 416(*l*) of this title)" for "age 65" in cls. (i) and (ii)(I) of provisions following subpar. (D) and preceding subpar. (E).

Pub. L. 98-369, § 2661(b)(1)(C), substituted "in which" for "to which" in provisions following cl. (ii) of provisions following subpar. (D) and preceding subpar. (E).

Subsec. (c)(5)(A). Pub. L. 98-369, § 2661(b)(2), substituted "clauses (i) and (ii)" for "classes (i) and (ii)".

Subsec. (d)(1). Pub. L. 98-369, § 2663(a)(2)(A)(i), substituted "subparagraphs" for "paragraphs" and "subparagraph" for "paragraph" in cl. (ii) of provisions following subpar. (C) and preceding subpar. (D).

Subsec. (d)(1)(G). Pub. L. 98-369, § 2663(a)(2)(A)(ii), in restructuring subpar. (G), struck out the comma after "age of 18", substituted a dash for a comma after "the age of 22", substituted "(i) the termination month, subject to section 423(e) of this title (and for purposes" for ", or, subject to section 423(e) of this title, the termination month (and for purposes", and inserted closing parenthesis after "activity" and substituted "(ii)" and "(iii)" for "(III)" and "(IV)", respectively.

Subsec. (d)(7)(A). Pub. L. 98-369, § 2663(a)(2)(A)(iii), substituted "the effective date of this sentence" for "the date of enactment of this paragraph".

Subsec. (e)(1). Pub. L. 98-369, § 2663(a)(2)(B), in provisions following subpar. (F)(ii), struck out the first of two commas following "age 60" and substituted "she engages" for "he engages".

Subsec. (e)(2)(A). Pub. L. 98-389, § 2661(c)(1), substituted "paragraph (7) of this subsection" for "paragraph (8) of this subsection".

Subsec. (e)(2)(C). Pub. L. 98-369, § 2661(c)(2), struck out the period after "If such deceased individual" and inserted a closing parenthesis after "paragraph (3) of such subsection (w) of this section".

Subsec. (e)(7)(A). Pub. L. 98-369, § 2661(c)(3), substituted "paragraph (2)(D)" for "paragraph (2)(B)".

Subsec. (f)(1). Pub. L. 98-389, § 2663(a)(2)(C), struck out the first of two commas after "age 60" in provisions following subpar. (F).

Subsec. (f)(1)(C)(ii). Pub. L. 98-369, § 2661(d)(1), substituted "retirement age (as defined in section 416(*l*) of this title)" for "age 65".

Subsec. (f)(2)(A). Pub. L. 98-369, § 2661(d)(2), substituted "paragraph (3)(D)" for "paragraph (3)(B)".

Subsec. (f)(3)(C). Pub. L. 98-369, § 2661(d)(3), struck out the period after "If such deceased individual".

Subsec. (f)(3)(D)(i). Pub. L. 98-369, § 2663(a)(2)(D), struck out the semicolon after "applicable,".

Subsec. (i). Pub. L. 98-369, § 2663(a)(2)(E), amended language being deleted by Pub. L. 97-35, § 2202(a)(1). See 1981 Amendment note below.

Subsec. (q)(3)(E). Pub. L. 98-369, § 2662(c)(1), made a clarifying amendment to Pub. L. 98-21, § 201(c)(1)(A). See 1983 Amendment note below.

Subsec. (q)(3)(G). Pub. L. 98-369, § 2663(a)(2)(F)(i), substituted "if the period" for "as if the period".

Subsec. (q)(7)(E). Pub. L. 98-369, § 2663(a)(2)(F)(ii), substituted "she or he attained retirement age" for "he attained retirement age".

Subsec. (q)(9)(B)(i). Pub. L. 98-369, § 2661(e), substituted "section 416(*l*) of this title" for "section 418(a) of this title".

Subsec. (t)(4)(E). Pub. L. 98-369, § 2663(a)(2)(G), inserted "of 1937 or 1974" after "Railroad Retirement Act" the first place it appears and substituted references to section 5(k)(1) of the Railroad Retirement Act of 1937 and section 18(2) of the Railroad Retirement Act of 1974 for reference to section 5(k)(1) of the Railroad Retirement Act.

Subsec. (u)(1)(B). Pub. L. 98-369, § 2663(a)(2)(H), struck out ", 822, or 823" after "section 783".

1983—Subsec. (a). Pub. L. 98-21, § 201(c)(1)(A), as amended by Pub. L. 98-369, § 2662(c)(1), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 or the age of 65, wherever appearing.

Subsec. (b)(1). Pub. L. 98-21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 in two places.

Subsec. (b)(3). Pub. L. 98-21, § 307(a), struck out exception in provisions following subpar. (B) that, in the case of such a marriage to an individual entitled to benefits under subsection (d) of this section, the preceding provisions of this paragraph would not apply with respect to benefits for months after the last month for which such individual was entitled to such benefits under subsection (d) of this section unless he ceased to be so entitled by reason of his death.

Subsec. (b)(3)(A). Pub. L. 98-21, §§ 301(a)(7), 309(a), inserted references to subsecs. (c) and (g), respectively.

Subsec. (b)(4)(A). Pub. L. 98-21, § 337(a), substituted "by an amount equal to two-thirds of the amount of any monthly periodic benefit" for "by an amount equal to the amount of any monthly periodic benefit", and inserted provision that the amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

Subsec. (b)(5). Pub. L. 98-21, § 132(a), added par. (5).

Subsec. (c)(1). Pub. L. 98-21, § 301(a)(1), inserted "and every divorced husband (as defined in section 416(d) of this title)" before "of an individual", and "or such divorced husband" after "if such husband" in provisions preceding subpar. (A).

Pub. L. 98-21, § 306(d), in provisions following subpar. (D) and preceding subpar. (E), inserted "(subject to subsection (s) of this section)" after "be entitled to".

Pub. L. 98-21, § 201(c)(1)(A), which directed the substitution of "retirement age (as defined in section 416(*l*) of this title" for "age 65" in provisions following subpar. (D) and preceding subpar. (E) was executed to those provisions after the execution of the amendment by section 301(a)(2)(C) of Pub. L. 98-21 as the probable intent of Congress.

Pub. L. 98-21, § 301(a)(2)(C), amended provisions following subpar. (D) generally, inserting references to a divorced husband and to subpar. (D), designating existing provisions as subpars. (E) to (G) and (I) and (J), adding subpar. (H), and revising subpar. (G).

Subsec. (c)(1)(B). Pub. L. 98-21, § 306(e), inserted alternative provisions relating to the case of a husband.

Subsec. (c)(1)(C). Pub. L. 98-21, § 301(a)(2)(A), (B), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (c)(1)(D). Pub. L. 98-21, § 301(a)(8), substituted "such individual" for "his wife" after "amount of".

Pub. L. 98-21, § 301(a)(2)(B), redesignated former subpar. (C) as (D).

Subsec. (c)(1)(I) to (K). Pub. L. 98-21, § 306(f), added subpar. (I), and redesiguated subpars. (I) and (J), as added by section 301(a)(2)(C) of Pub. L. 98-21, as (J) and (K).

Subsec. (c)(2)(A). Pub. L. 98-21, § 337(a), substituted "by an amount equal to two-thirds of the amount of any monthly periodic benefit" for "by an amount equal to the amount of any monthly periodic benefit", and inserted provision that the amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

Pub. L. 98-21, § 301(a)(6), inserted "(or divorced husband)" after "payable to such husband".

Subsec. (c)(3). Pub. L. 98-21, § 301(a)(3), inserted "(or, in the case of a divorced husband, his former wife)" before "for such month".

Subsec. (c)(4), (5). Pub. L. 98-21, § 301(a)(4), (5), added pars. (4) and (5).

Subsec. (d)(5). Pub. L. 98-21, § 307(a), struck out exception in provisions following subpar. (B) that in the case of such a marriage to a male individual entitled to benefits under section 423(a) of this title or this subsection, the preceding provisions of this paragraph would not apply with respect to benefits for months after the last month for which such individual was entitled to such benefits under section 423(a) of this title or this subsection unless he ceased to be so entitled by reason of his death, or in the case of an individual entitled to benefits under section 423(a) of this title, he was entitled, for the month following such last month, to benefits under subsection (a) of this section.

Subsec. (d)(5)(A). Pub. L. 98-21, § 301(a)(9), inserted reference to subsec. (c).

Subsec. (d)(8)(D)(ii)(II). Pub. L. 98-21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 in two places.

Subsec. (e)(1). Pub. L. 98-21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 in provisions following subpar. (F).

Pub. L. 98-21, § 133(a)(2)(A), inserted "(as determined after application of subparagraphs (B) and (C) of paragraph (2))" after "primary insurance amount" in provisions following subpar. (F).

Subsec. (e)(1)(B)(ii). Pub. L. 98-21, § 131(a)(3)(B), substituted reference to par. (4) for reference to par. (5).

Subsec. (e)(1)(C). Pub. L. 98-21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 in two places.

Subsec. (e)(1)(D). Pub. L. 98-21, § 133(a)(2)(A), inserted "(as determined after application of subparagraphs (B) and (C) of paragraph (2))" after "primary insurance amount".

Subsec. (e)(1)(F)(i). Pub. L. 98-21, § 131(a)(3)(C), substituted reference to par. (5) for reference to par. (6).

Subsec. (e)(1)(F)(ii). Pub. L. 98-21, § 131(a)(3)(C), substituted reference to par. (4) for reference to par. (5).

Subsec. (e)(2)(A). Pub. L. 98-21, § 133(a)(1)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "Except as provided in subsection (q) of this section, paragraph (7) of this subsection, and subparagraph (B) of this paragraph, such widow's insurance benefit for each month shall be equal to the primary insurance amount (as determined after application of the following sentence) of such deceased individual. If such deceased individual was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w) of this section, then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title and under section 415(i) of this title as if such individual were still alive in the case of an individual who has died) which he was receiving (or would upon application have received) for the month prior to the month in which he died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of subsection (w) of this section the number of increment months shall include any month in the months of the calendar year in which he died, prior to the month in which he died, which satisfy the conditions in paragraph (2) of subsection (w) of this section."

Pub. L. 98-21, § 131(a)(3)(D), substituted reference to par. (7) for reference to par. (8).

Pub. L. 98-21, § 113(d), substituted "section 415(f)(5), 415(f)(6), or 415(f)(9)(B)" for "section 415(f)(5) or (6)".

Subsec. (e)(2)(B). Pub. L. 98-21, § 133(a)(1)(A), added subpar. (B) and redesignated former subpar. (B) as (D).

Subsec. (e)(2)(B)(i). Pub. L. 98-21, § 113(d), substituted "section 415(f)(5), 415(f)(6), or 415(f)(9)(B)" for "section 415(f)(5) or (6)".

Subsec. (e)(2)(C), (D). Pub. L. 98-21, § 133(a)(1), added subpar. (C) and redesignated former subpar. (B) as (D).

Subsec. (e)(2)(D)(ii). Pub. L. 98-21, § 133(a)(2)(B), inserted "(as determined without regard to subparagraph (C))" after "primary insurance amount".

Subsec. (e)(3). Pub. L. 98-21, § 131(a)(1)-(3)(A), redesignated par. (4) as (3), and in par. (3) as so redesignated, substituted provision that, for purposes of par. (1), if (A) a widow or surviving divorced wife marries after attaining age 60 (or after attaining age 50 if she was entitled before such marriage occurred to benefits based on disability under this subsection, or (B) a disabled widow or disabled surviving divorced wife described in paragraph (1)(B)(ii) marries after attaining age 50, such marriage shall be deemed not to have occurred, for provision that if a widow, after attaining age 60, married, such marriage would for purposes of par. (1) be deemed not to have occurred. Former par. (3), which had provided that if a widow before attaining age 60, or a surviving divorced wife, married (A) an individual entitled to benefits under subsec. (f) or (h), or (B) an individual who had attained the age of eighteen and was entitled to benefits under subsec. (d), such widow's or surviving divorced wife's entitlement to benefits under this subsection would, notwithstanding the provisions of par. (1) of this subsection, but subject to subsec. (s), not be terminated by reason of such marriage, except that, in the case of such a marriage to an individual entitled to benefits under subsec. (d), the preceding provisions of this paragraph would not apply with respect to benefits for months after the last month for which such individual was entitled to such benefits under subsec. (d) unless he ceased to be so entitled by reason of his death, was struck out.

Subsec. (e)(4). Pub. L. 98-21, § 131(a)(3)(A), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (e)(5). Pub. L. 98-21, § 131(a)(3)(A), (E), redesignated par. (6) as (5) and, in par. (5) as so redesignated, substituted reference to par. (4) for reference to par. (5). Former par. (5) redesignated (4).

Subsec. (e)(6). Pub. L. 98-21, § 131(a)(3)(A), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Subsec. (e)(7). Pub. L. 98-21, § 131(a)(3)(A), redesignated par. (8) as (7). Former par. (7) redesignated (6).

Subsec. (e)(7)(A). Pub. L. 98-21, § 337(a), substituted "by an amount equal to two-thirds of the amount of any monthly periodic benefit" for "by an amount equal to the amount of any monthly periodic benefit", and inserted provision that the amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

Pub. L. 98-21, § 131(a)(3)(F), substituted reference to par. (3) for reference to par. (4).

Subsec. (e)(8). Pub. L. 98-21, § 131(a)(3)(A), redesignated par. (8) as (7).

Subsec. (f)(1). Pub. L. 98-21, § 301(b)(1), inserted "and every surviving divorced husband (as defined in section 416(d) of this title)" before "of an individual", and "or such surviving divorced husband" after "if such widower" in provisions preceding subpar. (A).

Pub. L. 98-21, § 301(b)(2), substituted "such deceased individual" for "his deceased wife" in provisions following subpar. (F).

Pub. L. 98-21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 in provisions following subpar. (F).

Pub. L. 98-21, § 133(b)(2)(A), inserted "(as determined after application of subparagraphs (B) and (C) of paragraph (3))" after "primary insurance amount" in provisions following subpar. (F).

Subsec. (f)(1)(A). Pub. L. 98-21, § 302, substituted "is not married" for "has not remarried".

Subsec. (f)(1)(B)(ii). Pub. L. 98-21, § 131(b)(3)(B), substituted reference to par. (5) for reference to par. (6).

Subsec. (f)(1)(C)(i). Pub. L. 98-21, § 306(g), designated existing provisions as cl. (I).

Pub. L. 98-21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Subsec. (f)(1)(C)(ii). Pub. L. 98-21, § 201(c)(1)(A), which directed the substitution of "retirement age (as defined in section 416(*l*) of this title)" for "age 65" in cl. (ii) was executed to those provisions after the exe-

cution of section 306(g) of Pub. L. 98-21 as the probable intent of Congress.

Pub. L. 98-21, § 306(g), added cl. (ii).

Subsec. (f)(1)(D). Pub. L. 98-21, § 301(b)(2), substituted "such deceased individual" for "his deceased wife".

Pub. L. 98-21, § 133(b)(2)(A), inserted "(as determined after application of subparagraphs (B) and (C) of paragraph (3))" after "primary insurance amount".

Subsec. (f)(1)(F)(i). Pub. L. 98-21, § 131(b)(3)(C), substituted reference to par. (6) for reference to par. (7).

Subsec. (f)(1)(F)(ii)(I). Pub. L. 98-21, § 131(b)(3)(C), substituted reference te par. (5) for reference to par. (6).

Subsec. (f)(2)(A). Pub. L. 98-21, § 337(a), substituted "by an amount equal to two-thirds of the amount of any monthly periodic benefit" for "by an amount equal to the amount of any monthly periodic benefit", and inserted provision that the amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

Pub. L. 98-21, § 131(b)(3)(D), substituted reference to par. (4) for reference to par. (5).

Subsec. (f)(3)(A). Pub. L. 98-21, § 133(b)(1)(B), amended subpar. (A) generally. Prior to the amendment subpar. (A) read as follows: "Except as provided in subsection (q) of this section, paragraph (2) of this subsection, and subparagraph (B) of this paragraph, such widower's insurance benefit for each month shall be equal to the primary insurance amount (as determined after application of the following sentence) of his deceased wife. If such deceased individual was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w) of this section, then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title and under section 415(i) of this title as if such individual were still alive in the case of an individual who has died) which she was receiving (or would upon application have received) for the month prior to the month in which she died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of subsection (w) of this section) the number of increment months shall include any month in the months of the calendar year in which she died, prior to the month in which she died, which satisfy the conditions in paragraph (2) of subsection (w) of this section."

Pub. L. 98-21, § 113(d), substituted "section 415(f)(5), 415(f)(6), or 415(f)(9)(B)" for "section 415(f)(5) or (6)".

Subsec. (f)(3)(B). Pub. L. 98-21, § 133(b)(1), added subpar. (B) and redesignated former subpar. (B) as (D).

Pub. L. 98-21, § 113(d), substituted "section 415(f)(5), 415(f)(6), or 415(f)(9)" for "section 415(f)(5) or (6)".

Subsec. (f)(3)(B)(ii)(II). Pub. L. 98-21, § 301(b)(3), inserted "or surviving divorced husband" after "widower".

Subsec. (f)(3)(C). Pub. L. 98-21, § 133(b)(1)(B), added subpar. (C).

Subsec. (f)(3)(D). Pub. L. 98-21, § 301(b)(4), inserted "or surviving divorced husband" after "widower" wherever appearing.

Pub. L. 98-21, § 301(b)(5), substituted "individual" for "wife" wherever appearing.

Pub. L. 98-21, § 133(b)(1)(A), redesignated former subpar. (B) as (D).

Subsec. (f)(3)(D)(ii). Pub. L. 98-21, § 133(b)(2)(B), inserted "(as determined without regard to subparagraph (C))" after "primary insurance amount".

Subsec. (f)(4). Pub. L. 98-21, § 301(b)(4), inserted "or surviving divorced husband" after "widower" in two places.

Pub. L. 98-21, § 131(b)(1)-(3)(A), redesignated par. (5) as (4), and amended par. (4) as so redesignated generally, substituting provision that for purposes of par. (1), if a widower married after attaining age 60 (or after attaining age 50 if entitled before such marriage occurred to benefits based on disability under this subsection), or a disabled widower described in paragraph (1)(B)(ii) married after attaining age 50, such marriage would be deemed not to have occurred, for provision that if a widower married after attaining age 60, such marriage would be deemed not to have occurred for purposes of par. (1). Former par. (4), which had provided that if a widower, before attaining age 60, remarried an individual entitled to benefits under subsec. (b), (e), (g), or (h) or an individual who had attained the age of eighteen and was entitled to benefits under subsec. (d), such widower's entitlement to benefits under this subsection would, notwithstanding the provisions of par. (1) of this subsection but subject to subsec. (s), not be terminated by reason of such marriage, was struck out.

Subsec. (f)(5). Pub. L. 98-21, § 301(b)(4), inserted "or surviving divorced husband" after "widower" in provisions preceding subpar. (A).

Pub. L. 98-21, § 131(b)(3)(A), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Subsec. (f)(5)(B), (C). Pub. L. 98-21, § 306(h), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (f)(6). Pub. L. 98-21, § 301(b)(4), inserted "or surviving divorced husband" after "widower".

Pub. L. 98-21, § 131(b)(3)(A), (E), redesignated par. (7) as (6) and in par. (6) as so redesignated, substituted reference to par. (5) for reference to par. (6). Former par. (6) redesignated (5).

Subsec. (f)(7), (8). Pub. L. 98-21, § 131(b)(3)(A), redesignated par. (8) as (7). Former par. (7) redesignated (6).

Subsec. (g). Pub. L. 98-21, § 306(a)(7), inserted "or father's" after "mother's" wherever appearing.

Subsec. (g)(1). Pub. L. 98-21, § 306(a)(8), struck out "after August 1950" after "beginning with the first month" in provisions following subpar. (F).

Pub. L. 98-21, § 306(a)(1), (2), (5), (6), substituted "surviving spouse" for "widow", "surviving spouse's" for "widow's", "he or she" for "she", and "parent" for "mother", wherever appearing.

Subsec. (g)(1)(D). Pub. L. 98-21, § 306(a)(3), substituted "a spouse's insurance benefit" for "wife's insurance benefits" and "such individual" for "he".

Subsec. (g)(1)(E), (F)(i). Pub. L. 98-21, § 306(a)(4), substituted "his or her" for "her".

Subsec. (g)(3). Pub. L. 98-21, § 307(a), struck out exception in provisions following subpar. (B) that in the case of such a marriage to an individual entitled to benefits under section 423(a) of this title or subsec. (d), the preceding provisions of this paragraph would not apply with respect to benefits for months after the last month for which such individual was entitled to such benefits under section 423(a) of this title or subsec. (d) unless he ceased to be so entitled by reason of his death, or in the case of an individual entitled to benefits under section 423(a) of this title, he was entitled, for the month following such last month, to benefits under subsec. (a).

Pub. L. 98-21, § 306(a)(1), (6), substituted "surviving spouse" for "widow" and "parent" for "mother" wherever appearing.

Subsec. (g)(3)(A). Pub. L. 98-21, § 306(a)(9)(B), inserted reference to this subsection and subsecs. (b) and (e).

Pub. L. 98-21, § 301(b)(6), inserted reference to subsec. (c).

Subsec. (g)(4)(A). Pub. L. 98-21, § 337(a), substituted "by an amount equal to two-thirds of the amount of any monthly periodic benefit" for "by an amount equal to the amount of any monthly periodic benefit", and inserted provision that the amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

Subsec. (h)(4). Pub. L. 98-21, § 307(a), struck out exception in provisions following subpar. (B) that in the case of such a marriage to a male individual entitled to benefits under subsec. (d), the preceding provisions of this paragraph would not apply with respect to benefits for months after the last month for which such individual was entitled to such benefits under subsec. (d) unless he ceased to be so entitled by reason of his death.

Subsec. (h)(4)(A). Pub. L. 98-21, § 301(b)(7), inserted reference to subsec. (c).

Subsec. (j)(4)(B)(iii) to (v). Pub. L. 98-21, § 334(a), added cl. (iii) and redesignated former cls. (iii) and (iv) as (iv) and (v), respectively.

Subsec. (k)(2)(B), (3)(B). Pub. L. 98-21, § 131(b)(3)(F), (G), substituted references to subsecs. (e)(3) and (f)(4) for referenees to subsecs. (e)(4) and (f)(5), respectively, wherever appearing.

Subsec. (m). Pub. L. 98-21, §§ 111(a)(7), 134(b), in par. (1) substituted "November" for "May" and in par. (2)(B) substituted "subsection (q)(6)(B)" for "subsection (q)(6)(A)(ii)", as subsec. (m) [notwithstanding its repeal by Pub. L. 97-35] continues to apply in certain cases by reason of section 2(j)(2)-(4) of Pub. L. 97-123, set out as an Effective Date of 1981 Amendment note under section 415 of this title. As thus amended subsec. (m) would read as follows:

"(1) In any case in which an individual is entitled to a monthly benefit under this section on the basis of a primary insurance amount computed under section 415(a) or (d) of this title, as in effect after December 1978, on the basis of the wages and self-employment income of a deceased individual for any month and no other person is (without the application of subsection (j)(1) of this section) entitled to a monthly benefit under this section for that month on the basis of such wages and self-employment income, the individual's benefit amount for that month, prior to reduction under subsection (k)(3) of this section, shall not be less than that provided by subparagraph (C)(1)(I) of section 415(a)(1) of this title and increased under section 415(i) of this title for months after November of the year in which the insured individual died as though such benefit were a primary insurance amount.

"(2) In the case of any such individual who is entitled to a monthly benefit under subsection (e) or (f) of this section, such individual's benefit amount, after reduction under subsection (q)(1) of this section, shall be not less than—

"(A) $84.50, if his first month of entitlement to such benefit is the month in which such individual attained age 62 or a subsequent month, or

"(B) $84.50 reduced under subsection (q)(1) of this section as if retirement age as specified in subsection (q)(6)(B) of this section were age 62 instead of the age specified in subsection (q)(9) of this section, if his first month of entitlement to such benefit is before the month in which he attained age 62.

"(3) In the case of any individual whose benefit amount was computed (or recomputed) under the provisions of paragraph (2) and such individual was entitled to benefits under subsection (e) or (f) of this section for a month prior to any month after 1972 for which a general benefit increase under this subchapter (as defined in section 415(i)(3) of this title) or a benefit increase under section 415(i) of this title becomes effective, the benefit amount of such individual as computed under paragraph (2) without regard to the reduction specified in subparagraph (B) thereof shall be increased by the percentage increase applicable for such benefit increase, prior to the application of subsection (q)(1) of this section pursuant to paragraph (2)(B) and subsection (q)(4) of this section."

Subsec. (q)(1). Pub. L. 98-21, § 201(b)(2), substituted "Subject to paragraph (9), if" for "If" at the beginning of par. (1).

Pub. L. 98-21, § 134(a)(1), struck out provisions following subpar. (B)(ii) which directed that in the case of a widow or widower whose first month of entitlement to a widow's or widower's insurance benefit was a month before the month in which such widow or widower attained age 00, such benefit, reduced pursuant to preceding provisions of this paragraph (and before the application of the second sentence of paragraph (8)), had to be further reduced by ⁵⁄₁₂ of 1 percent of the amount of such benefit, multiplied by the number of months in the additional reduction period for such benefit (determined under paragraph (6)(B)), if such benefit was for a month before the month in which such individual attained age 62, or if less, the number of months in the additional adjusted reduction period for such benefit (determined under paragraph (7)), if such benefit was for the month in which such individual attained age 62 or any month thereafter.

Subsec. (q)(1)(B)(i). Pub. L. 98-21, § 134(a)(2)(C), substituted "paragraph (6)" for "paragraph (6)(A)".

Subsec. (q)(2). Pub. L. 98-21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Subsec. (q)(3)(A)(i). Pub. L. 98-21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Subsec. (q)(3)(E). Pub. L. 98-21, § 309(b), inserted "or surviving divorced husband" after "widower".

Pub. L. 98-21, § 201(c)(1)(A), as amended by Pub. L. 98-369, § 2662(c)(1), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to the age of 65.

Subsec. (q)(3)(E)(ii). Pub. L. 98-21, § 134(a)(2)(C), substituted "paragraph (6)" for "paragraph (6)(A)".

Subsec. (q)(3)(F). Pub. L. 98-21, § 309(b), inserted "or surviving divorced husband" after "widower".

Subsec. (q)(3)(F)(ii)(I). Pub. L. 98-21, § 134(a)(2)(C), substituted "paragraph (6)" for "paragraph (6)(A)".

Subsec. (q)(3)(G). Pub. L. 98-21, § 309(b), inserted "or surviving divorced husband" after "widower".

Pub. L. 98-21, § 134(a)(2)(B), substituted "paragraph (6)" for "paragraph (6)(A) (or, if such paragraph does not apply, the period specified in paragraph (6)(B))".

Subsec. (q)(5). Pub. L. 98-21, § 309(c)(4), substituted "he or she" for "she" wherever appearing.

Pub. L. 98-21, § 309(c)(1), inserted "or husband's" after "wife's" wherever appearing.

Subsec. (q)(5)(A)(i). Pub. L. 98-21, § 309(c)(2), substituted "him or her" for "her".

Subsec. (q)(5)(A)(ii). Pub. L. 98-21, § 309(c)(3), substituted "the" for "her" after "income".

Subsec. (q)(5)(B)(ii). Pub. L. 98-21, § 309(c)(6), substituted "the individual" for "the woman".

Subsec. (q)(5)(C). Pub. L. 98-21, § 309(c)(6), substituted "an individual" for "a woman".

Pub. L. 98-21, § 309(c)(5), substituted "his or her" for "her".

Pub. L. 98-21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 wherever appearing.

Subsec. (q)(5)(D). Pub. L. 98-21, § 309(c)(7), inserted "or widower's" after "widow's", substituted "spouse" for "husband" wherever appearing, substituted "spouse's" for "husband's" wherever appearing, and inserted "or father's" after "mother's".

Pub. L. 98-21, § 309(c)(5), substituted "his or her" for "her" in three places.

Subsec. (q)(6). Pub. L. 98-21, § 134(a)(2)(A), amended par. (6) generally, striking out subpar. designation "(A)" after "this subsection" and redesignated cl. (I) as subpar. (A), in subpar. (A) as so redesignated, redesignated subcls. (I) to (III) as cls. (i) to (iii), respectively, redesignated former cl. (ii) as subpar. (B), and struck out former subpar. (B), which had provided that the "additional reduction period" for an individual's widow's or widower's insurance benefit was the period beginning with the first day of the first month for which such individual was entitled to such benefit, but only if such individual had not attained age 60 in such first month, and ending with the last day of the month before the month in which such individual attained age 60.

Subsec. (q)(6)(A)(i). Pub. L. 98-21, § 309(d)(1), struck out "or husband's" after "old-age".

Subsec. (q)(6)(A)(ii). Pub. L. 98-21, § 309(d)(1), inserted "or husband's" after "wife's".

Subsec. (q)(7). Pub. L. 98-21, § 134(a)(3), amended provisions preceding subpar. (A) generally, substituting reference to par. (6) for reference to par. (6)(A), and striking out provision that the additional adjusted reduction period for an individual's, widow's, or widower's insurance benefit was the additional reduction period prescribed by par. (6)(B) for such benefit, with the same exclusions as from the adjusted reduction period.

Subsec. (q)(7)(B). Pub. L. 98-21, § 309(d)(2)(A), inserted "or husband's" after "wife's", substituted "such individual" for "she", and inserted "his or" before "her".

Subsec. (q)(7)(D). Pub. L. 98-21, § 309(d)(2)(B), inserted "or widower's" after "widow's".

Susbec. (q)(9). Pub. L. 98-21, § 201(b)(1), amended par. (9) generally, substituting provisions defining the amount of reduction for early retirement specified in par. (1) for provision that, for purposes of this subsection, the term "retirement age" meant age 65.

Subsc. (q)(10). Pub. L. 98-21, § 134(a)(4)(A), in that part of second sentence preceding cl. (A) struck out "or an additional adjusted reduction period" after "the use of an adjusted reduction period".

Subsec. (q)(10)(B)(i). Pub. L. 98-21, § 134(a)(4)(B), struck out ", plus the number of months in the adjusted additional reduction period multiplied by 5/9 of 1 percent" before "to (ii)".

Subsec. (q)(10)(B)(ii). Pub. L. 98-21, § 134(a)(4)(C), struck out "plus the number of months in the additional reduction period multiplied by 5/9 of 1 percent," after "1 percent".

Subsec. (q)(10)(C). Pub. L. 98-21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Subsec. (q)(10(C)(i). Pub. L. 98-21, § 134(a)(4)(B), struck out ", plus the number of months in the adjusted additional reduction period multiplied by 5/9 of 1 percent" before "to (ii)".

Subsec. (q)(10)(C)(ii). Pub. L. 98-21, § 134(a)(4)(D), struck out "plus the number of months in the adjusted additional reduction period multiplied by 5/9 of 1 percent." after "1 percent,".

Subsec. (r)(1), (2). Pub. L. 98-21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Subsec. (s)(1). Pub. L. 98-21, § 309(e)(1), inserted reference to subsec. (c)(1).

Subsec. (s)(2). Pub. L. 98-21, § 309(e)(2), inserted reference to subsec. (c)(4).

Pub. L. 98-21, § 131(c)(1), substituted "So much of subsections (b)(3), (d)(5), (g)(3), and (h)(4)" for "Subsection (f)(4), and so much of subsections (b)(3), (d)(5), (e)(3), (g)(3), and (h)(4)".

Subsec. (s)(3). Pub. L. 98-21, § 309(e)(3), substituted "The last sentence" for "So much of subsections (b)(3), (d)(5), (g)(3), and (h)(4) of this section as follows the semicolon, the last sentence".

Pub. L. 98-21, § 131(c)(2), struck out "(e)(3)," after "(d)(5),".

Subsec. (t)(2), (4). Pub. L. 98-21, § 340(b), substituted "Subject to paragraph (11), paragraph (1)" for "Paragraph (1)".

Subsec. (t)(11). Pub. L. 98-21, § 340(a)(2), added par. (11).

Subsec. (w)(1)(A). Pub. L. 98-21, § 114(a), substituted a definition of the multiplicand as the applicable percentage (as determined under paragraph (6)) of such amount for a definition of the multiplicand as ½ of 1 percent of such amount, or, in the case of an individual who first becomes eligible for an old-age insurance benefit after December 1978, one-quarter of 1 percent of such amount.

Subsec. (w)(2)(A). Pub. L. 98-21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Pub. L. 98-21, § 114(c)(1), substituted "age 70" for "age 72".

Subsec. (w)(3). Pub. L. 98-21, § 114(c)(1), substituted "age 70" for "age 72".

Subsec. (w)(6). Pub. L. 98-21, § 114(b), added par. (6).

Subsec. (x). Pub. L. 98-21, § 339(a), added subsec. (x).

1981—Pub. L. 97-35, § 2202(a)(1), as amended by Pub. L. 98-369, § 2663(a)(2)(E), substituted in par. (1) provision that a qualifying widow or widower be paid for provision that unpaid burial expenses to a funeral home be paid and in par. (2) provision for payment in the event that no one qualifies or if the person entitled dies before receiving payment for provision for payment if all burial expenses incurred by or through a funeral home were paid, and struck out pars. (3) and (4), which provided for payment if the body of the insured is not available for burial but expenses were incurred for a memorial marker, service, etc., and for distribution of any amounts remaining available after payments under this subsection were made, respectively, and struck out "(except a payment authorized pursuant to clause (1)(A) of the preceding sentence)" after "No payment".

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 1883(f) of Pub. L. 99-514 provided that: "Except as otherwise provided in this section, the amendments made by this section [amending sections 402, 410, 411, 415, 418, 421, 423, 602, 657, 658, 664, 674, 1301, 1320b-6, 1382a, 1383, and 1397b of this title and sections 1402 and 3121 of Title 26, Internal Revenue Code, repealing section 1397f of this title, enacting provisions set out as notes under sections 602 and 678 of this title, and amending provisions set out as a note under section 410 of this title] shall take effect on the date of the enactment of this Act [Oct. 22, 1986]."

Section 12104(b) of Pub. L. 99-272 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to benefits for which application is filed after the date of the enactment of this Act [Apr. 7, 1986]."

Section 12107(c) of Pub. L. 99-272 provided that: "The amendments made by this section [amending sections 402 and 423 of this title] are effective December 1, 1980, and shall apply with respect to any individual who is under a disability (as defined in section 223(d) of the Social Security Act [section 423(d) of this title]) on or after that date."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by sections 2601 and 2662 of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2664(a) of Pub. L. 98-369, set out as a note under section 401 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 111(a)(8) of Pub. L. 98-21 provided that: "The amendments made by this subsection [amending sections 402, 403, 415, and 430 of this title] shall apply with respect to cost-of-living increases determined under section 215(i) of the Social Security Act [42 U.S.C. 415(i)] for years after 1982."

Section 114(c)(2) of Pub. L. 98-21 provided that: "The amendments made by paragraph (1) [amending subsec. (w)(2)(A), (3) of this section] shall apply with respect to increment months in calendar years after 1983."

Section 131(d) of Pub. L. 98-21 provided that:

"(1) The amendments made by this section [amending sections 402 and 426 of this title] shall be effective with respect to monthly benefits payable under title II

of the Social Security Act [this subchapter] for months after December 1983.

"(2) In the case of an individual who was not entitled to a monthly benefit of the type involved under title II of such Act for December 1983, no benefit shall be paid under such title by reason of such amendments unless proper application for such benefit is made."

Section 132(c)(1) of Pub. L. 98-21 provided that: "The amendments made by subsection (a) [enacting subsec. (b)(5) of this section] shall apply with respect to monthly insurance benefits for months after December 1984, but only on the basis of applications filed on or after January 1, 1985."

Section 133(c) of Pub. L. 98-21 provided that: "The amendments made by this section [amending subsecs. (e) and (f) of this section] shall apply with respect to monthly insurance benefits for months after December 1984 for individuals who first meet all criteria for entitlement to benefits under section 202(e) or (f) of the Social Security Act [subsecs. (e) and (f) of this section] (other than making application for such benefits) after December 1984."

Section 134(c) of Pub. L. 98-21 provided that: "The amendments made by this section [amending subsecs. (m) and (q) of this section] shall apply with respect to benefits for months after Decemher 1983."

Section 301(a)(5) of Pub. L. 98-21, as amended by Pub. L. 98-369, div. B, title VI, § 2662(d), July 18, 1984, 98 Stat. 1159, provided in part that the enactment of subsec. (c)(5) of this section [by section 301(a)(5) of Pub. L. 98-21] is effective "with respect to monthly insurance benefits for months after December 1984 (but only on the basis of applications filed on or after January 1, 1985)".

Section 307(b) of Pub. L. 98-21 provided that: "The amendments made by subsection (a) [amending subsecs. (b)(3), (d)(5), (g)(3), and (h)(4) of this section] shall apply with respect to benefits under title II of the Social Security Act [this subchapter] for months after the month in which this Act is enacted [Apr. 1983], but only in cases in which the 'last month' referred to in the provision amended is a month after the month in which this Act is enacted."

Section 310 of part A [§§ 301-310] of title III of Pub. L. 98-21 provided that:

"(a) Except as otherwise specifically provided in this title, the amendments made by this part [amending sections 402, 403, 405, 416, 417, 422, 423, 425, 426, 427, and 428 of this title] apply only with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after the month in which this Act is enacted [Apr. 1983].

"(b) Nothing in any amendment made by this part shall be construed as affecting the validity of any benefit which was paid, prior to the effective date of such amendment, as a result of a judicial determination."

Section 334(b) of Pub. L. 98-21 provided that: "The amendments made by subsection (a) [amending subsec. (j)(4)(B) of this section] shall apply with respect to survivors whose applications for monthly benefits are filed after the second month following the month in which this Act is enacted [Apr. 1983]."

Section 337(b) of Pub. L. 98-21, as amended by Pub. L. 98-617, § 2(a)(1), Nov. 8, 1984, 98 Stat. 3294, provided that: "The amendments made by subsection (a) of this section [amending subsecs. (b)(4)(A), (c)(2)(A), (e)(7)(A), (f)(2)(A), and (g)(4)(A) of this section] shall apply only with respect to monthly insurance benefits payable under title II of the Social Security Act [this subchapter] for months after June 1983."

[Section 2(a)(2) of Pub. L. 98-617 provided that: "The amendments made by this subsection [amending above note] shall apply to benefits payable under title II of the Social Security Act [this subchapter] for months beginning after the month of enactment of this Act [November 1984]."]

Section 339(c) of Pub. L. 98-21 provided that: "The amendments made by subsections (a) and (b) [amending sections 402 and 423 of this title] shall apply with respect to monthly benefits payable for months beginning on or after the date of enactment of this Act [Apr. 20, 1983]."

Section 340(c) of Pub. L. 98-21 provided that: "The amendments made by this section [amending subsec. (t) of this section] shall apply with respect to any individual who initially becomes eligible for benefits under section 202 or 223 [42 U.S.C. 402 and 423] after December 31, 1984."

MONTHLY PAYMENTS TO SURVIVING SPOUSE OF MEMBER OR FORMER MEMBER OF ARMED FORCES WHERE SUCH PERSON HAS IN CARE A CHILD OF SUCH MEMBER; AMOUNT, CRITERIA, ETC.

Pub. L. 97-377, title I, § 156, Dec. 21, 1982, 96 Stat. 1920, as amended by Pub. L. 98-94, title IX, § 943, Sept. 24, 1983, 97 Stat. 654, provided that:

[See main edition for text of (a) to (f)]

"(g)(1) During each fiscal year the Secretary of Defense shall transfer from time to time to the head of the agency such amounts as the head of the agency determines to be necessary to pay the benefits provided for under subsections (a) and (b) during such fiscal year and to pay the administrative expenses incurred in paying such benefits during such fiscal year. During fiscal year 1983, transfers under this subsection shall be made from the 'Retired Pay, Defense' account of the Department of Defense. During subsequent fiscal years, such transfers shall be made from such account or from funds otherwise available to the Secretary for the purpose of the payment of such benefits and expenses. The Secretary of Defense may transfer funds under this subsection in advance of the payment of benefits and expenses by the head of the agency.

[See main edition for text of (2), (h) and (i)]

NONAPPLICABILITY OF AMENDMENTS BY SECTION 334 OF PUB. L. 95-216 TO MONTHLY INSURANCE BENEFITS PAYABLE TO INDIVIDUALS ELIGIBLE FOR MONTHLY PERIODIC BENEFITS; SAVINGS PROVISION

Section 334(g) of Pub. L. 95-216, as amended by Pub. L. 98-617, § 2(b)(1), Nov. 8, 1984, 98 Stat. 3294, provided that:

"(1) The amendments made by the preceding provisions of this section [see section 334(f) of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note above] shall not apply with respect to any monthly insurance benefit payable, under subsection (b), (c), (e), (f), or (g) (as the case may be) of section 202 of the Social Security Act [subsec. (b), (c), (e), (f), or (g) of this section] to an individual—

"(A)(i) to whom there is payable for any month within the 60-month period beginning with the month in which this Act [Dec., 1977] is enacted (or who is eligible in any such month for) a monthly periodic benefit (within the meaning of such provisions) based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2) of the Social Security Act) [section 418(b)(2) of this title], or (ii) who would have been eligible for such a monthly periodic benefit (within the meaning of paragraph (2)) before the close of such 60-month period, except for a requirement which postponed eligibility (as so defined) for such monthly periodic benefit until the month following the month in which all other requirements were met; and

[See main edition for text of (B); (2) and (3)]

[Section 2(b)(3) of Pub. L. 98-617 provided that: "The amendments made by this subsection [amending above note and provisions set out as an Offset Against Spouses' Benefits on Account of Public Pensions note below] shall apply with respect to benefits payable under title II of the Social Security Act [this subchap-

ter] for months beginning after the month of enactment of this Act [November 1984]."]

OFFSET AGAINST SPOUSES' BENEFITS ON ACCOUNT OF PUBLIC PENSIONS

Section 334(h) of PUB. L. 95-216, as added by Pub. L. 97-455, § 7(a)(1), Jan. 12, 1983, 96 Stat. 2501, and amended by Pub. L. 98-617, § 2(b)(2), Nov. 8, 1984, 98 Stat. 3294, provided that: "In addition, the amendments made by the preceding provisions of this section [see section 334(f) of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note above] shall not apply with respect to any monthly insurance benefit payable, under subsection (b), (c), (e), (f), or (g) (as the case may be) of section 202 of the Social Security Act [subsec. (b), (c), (e), (f), or (g) of this section], to an individual—

"(1)(A) to whom there is payable for any month prior to July 1983 (or who is eligible in any such month for) a monthly periodic benefit (within the meaning of such provisions) based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2) of the Social Security Act [section 418(b)(2) of this title]), or (B) who would have been eligible for such a monthly periodic benefit (within the meaning of subsection (g)(2) [set out as a note above]) before the close of June 1983, except for a requirement which postponed eligibility (as so defined) for such monthly periodic benefit until the month following the month in which all other requirements were met; and

[*See main edition for text of* (2)]

EX. ORD. NO. 12436. PAYMENT OF CERTAIN BENEFITS TO SURVIVORS OF PERSONS WHO DIED IN OR AS A RESULT OF MILITARY SERVICE

Ex. Ord. No. 12436, July 29, 1983, 48 F.R. 34931, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 156 of Public Law 97-377 (96 Stat. 1920; 42 U.S.C. 402 note), in order to provide certain benefits to the surviving spouses and children of certain persons who died in or as a result of military service, it is hereby ordered as follows:

SECTION 1. The Administrator of Veterans' Affairs is designated to administer the provisions of Section 156 of Public Law 97-377.

SEC. 2. The Secretary of Health and Human Services shall provide to the Administrator of Veterans' Affairs such information and such technical assistance as the Administrator may reasonably require to discharge his responsibilities under Section 156. The Administrator of Veterans' Affairs shall reimburse the Department of Health and Human Services for all expenses it incurs in providing such information and technical assistance to the Veterans' Administration. Such expenses shall be paid from the Veterans' Administration account described in Section 3 of this Order.

SEC. 3. During fiscal year 1983 and each sueceeding fiscal year, the Secretary of Defense shall transfer, from time to time, from the "Retired Pay, Defense" account of the Department of Defense to an account established in the Veterans' Administration, such amounts as the Administrator of Veterans' Affairs determines to be necessary to pay the benefits authorized by Section 156 during fiscal year 1983 and each succeeding fiscal year, and the expenses incurred by the Veterans' Administration in paying such benefits during fiscal year 1983 and each succeeding fiscal year. Such transfers shall, to the extent feasible, be made in advance of the payment of benefits and expenses by the Veterans' Administration.

SEC. 4. This Order shall be effective a[illegible]nuary 1, 1983.

[illegible]LD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 401, 403, 405, 415, 416, 417, 422, 423, 424a, 425, 426, 426a, 427, 428, 433, 1320b-1, 1383, 1383c, 1395i-1, 1395p, 1395r, 1395s of this title; title 5 sections 8332, 8421, 8442; title 30 sections 902, 922, 932; title 38 sections 412, 422; title 45 sections 231a, 231b, 231e, 231d, 231e, 231f.

§ 403. Reduction of insurance benefits

(a) Maximum benefits

[*See main edition for text of* (1) *and* (2)]

(3)(A) When an individual who is entitled to benefits on the basis of the wages and self-employment income of any insured individual and to whom this subsection applies would (but for the provisions of section 402(k)(2)(A) of this title) be entitled to child's insurance benefits for a month on the basis of the wages and self-employment income of one or more other insured individuals, the total monthly benefits to which all beneficiaries are entitled on the basis of such wages and self-employment income shall not be reduced under this subsection to less than the smaller of—

(i) the sum of the maximum amounts of benefits payable on the basis of the wages and self-employment income of all such insured individuals, or

(ii) an amount (I) initially equal to the product of 1.75 and the primary insurance amount that would be computed under section 415(a)(1) of this title, for January of the year determined for purposes of this clause under the following two sentences, with respect to average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined for that year under section 430 of this title, and (II) thereafter increased in accordance with the provisions of section 415(i)(2)(A)(ii) of this title.

The year established for purposes of clause (ii) shall be 1983 or, if it occurs later with respect to any individual, the year in which occurred the month that the application of the reduction provisions contained in this subparagraph began with respect to benefits payable on the basis of the wages and self-employment income of the insured individual. If for any month subsequent to the first month for which clause (ii) applies (with respect to benefits payable on the basis of the wages and self-employment income of the insured individual) the reduction under this subparagraph ceases to apply, then the year determined under the preceding sentence shall be redetermined (for purposes of any subsequent application of this subparagraph with respect to benefits payable on the basis of such wages and self-employment income) as though this subparagraph had not been previously applicable.

[*See main edition for text of* (B) *and* (C)]

(4) In any case in which benefits are reduced pursuant to the provisions of this subsection, the reduction shall be made after any deductions under this section and after any deductions under section 422(b) of this title. Whenever a reduction is made under this subsection

in the total of monthly benefits to which individuals are entitled for any month on the basis of the wages and self-employment income of an insured individual, each such benefit other than the old-age or disability insurance benefit shall be proportionately decreased.

[*See main edition for text of* (5)]

(6) Notwithstanding any of the preceding provisions of this subsection other than paragraphs (3)(A), (3)(C), (4), and (5) (but subject to section 415(i)(2)(A)(ii) of this title), the total monthly benefits to which beneficiaries may be entitled under sections 402 and 423 of this title for any month on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits shall be reduced (before the application of section 424a of this title) to the smaller of—

[*See main edition for text of* (A) *and* (B)]

(7) In the case of any individual who is entitled for any month to benefits based upon the primary insurance amounts of two or more insured individuals, one or more of which primary insurance amounts were determined under section 415(a) or (d) of this title as in effect (without regard to the table contained therein) prior to January 1979 and one or more of which primary insurance amounts were determined under section 415(a)(1) or (4) of this title, or section 415(d) of this title, as in effect after December 1978, the total benefits payable to that individual and all other individuals entitled to benefits for that month based upon those primary insurance amounts shall be reduced to an amount equal to the amount determined in accordance with the provisions of paragraph (3)(A)(ii) of this subsection, except that for this purpose the references to subparagraph (A) in the last two sentences of paragraph (3)(A) shall be deemed to be references to paragraph (7).

(8) Subject to paragraph (7), this subsection as in effect in December 1978 shall remain in effect with respect to a primary insurance amount computed under section 415(a) or (d) of this title, as in effect (without regard to the table contained therein) in December 1978, except that a primary insurance amount so computed with respect to an individual who first becomes eligible for an old-age or disability insurance benefit, or dies (before becoming eligible for such a benefit), after December 1978, shall instead be governed by this section as in effect after December 1978. For purposes of the preceding sentence, the phrase "rounded to the next higher multiple of $0.10", as it appeared in subsection (a)(2)(C) of this section as in effect in December 1978, shall be deemed to read "rounded to the next lower multiple of $0.10".

[*See main edition for text of* (9)]

(b) Deductions on account of work

(1) Deductions, in such amounts and at such time or times as the Secretary shall determine, shall be made from any payment or payments under this subchapter to which an individual is entitled, and from any payment or payments to which any other persons are entitled on the basis of such individual's wages and self-employment income, until the total of such deductions equals—

(A) such individual's benefit or benefits under section 402 of this title for any month, and

(B) if such individual was entitled to old-age insurance benefits under section 402(a) of this title for such month, the benefit or benefits of all other persons for such month under section 402 of this title based on such individual's wages and self-employment income,

if for such month he is charged with excess earnings, under the provisions of subsection (f) of this section, equal to the total of benefits referred to in clauses (A) and (B). If the excess earnings so charged are less than such total of benefits, such deductions with respect to such month shall be equal only to the amount of such excess earnings. If a child who has attained the age of 18 and is entitled to child's insurance benefits, or a person who is entitled to mother's or father's insurance benefits, is married to an individual entitled to old-age insurance benefits under section 402(a) of this title, such child or such person, as the case may be, shall, for the purposes of this subsection and subsection (f) of this section, be deemed to be entitled to such benefits on the basis of the wages and self-employment income of such individual entitled to old-age insurance benefits. If a deduction has already been made under this subsection with respect to a person's benefit or benefits under section 402 of this title for a month, he shall be deemed entitled to payments under such section for such month for purposes of further deductions under this subsection, and for purposes of charging of each person's excess earnings under subsection (f) of this section, only to the extent of the total of his benefits remaining after such earlier deductions have been made. For purposes of this subsection and subsection (f) of this section—

(i) an individual shall be deemed to be entitled to payments under section 402 of this title equal to the amount of the benefit or benefits to which he is entitled under such section after the application of subsection (a) of this section, but without the application of the first sentence of paragraph (4) thereof; and

(ii) if a deduction is made with respect to an individual's benefit or benefits under section 402 of this title because of the occurrence in any month of an event specified in subsection (c) or (d) of this section or in section 422(b) of this title, such individual shall not be considered to be entitled to any benefits under such section 402 for such month.

(2) When any of the other persons referred to in paragraph (1)(B) is entitled to monthly benefits as a divorced spouse under section 402(b) or (c) of this title for any month and such person has been so divorced for not less than 2 years, the benefit to which he or she is entitled on the basis of the wages and self-employment income of the individual referred to in paragraph (1) for such month shall be determined without regard to deductions under this subsection as a

result of excess earnings of such individual, and the benefits of all other individuals who are entitled for such month to monthly benefits under section 402 of this title on the basis of the wages and self-employment income of such individual referred to in paragraph (1) shall be determined as if no such divorced spouse were entitled to benefits for such month.

(c) Deductions on account of noncovered work outside the United States or failure to have child in care

Deductions, in such amounts and at such time or times as the Secretary shall determine, shall be made from any payment or payments under this subchapter to which an individual is entitled, until the total of such deductions equals such individual's benefits or benefit under section 402 of this title for any month—

(1) in which such individual is under the age of seventy and for more than forty-five hours of which such individual engaged in noncovered remunerative activity outside the United States;

(2) in which such individual, if a wife or husband under retirement age (as defined in section 416(*l*) of this title) entitled to a wife's or husband's insurance benefit, did not have in his or her care (individually or jointly with his or her spouse) a child of such spouse entitled to a child's insurance benefit and such wife's or husband's insurance benefit for such month was not reduced under the provisions of section 402(q) of this title;

(3) in which such individual, if a widow or widower entitled to a mother's or father's insurance benefit, did not have in his or her care a child of his or her deceased spouse entitled to a child's insurance benefit; or

(4) in which such an individual, if a surviving divorced mother or father entitled to a mother's or father's insurance benefit, did not have in his or her care a child of his or her deceased former spouse who (A) is his or her son, daughter, or legally adopted child and (B) is entitled to a child's insurance benefit on the basis of the wages and self-employment income of such deceased former spouse.

For purposes of paragraphs (2), (3), and (4) of this subsection, a child shall not be considered to be entitled to a child's insurance benefit for any month in which paragraph (1) of section 402(s) of this title applies or an event specified in section 422(b) of this title, occurs with respect to such child. Subject to paragraph (3) of such section 402(s) of this title, no deduction shall be made under this subsection from any child's insurance benefit for the month in which the child entitled to such benefit attained the age of eighteen or any subsequent month; nor shall any deduction be made under this subsection from any widow's insurance benefit for any month in which the widow or surviving divorced wife is entitled and has not attained retirement age (as defined in section 416(*l*) of this title) (but only if she became so entitled prior to attaining age 60), or from any widower's insurance benefit for any month in which the widower or surviving divorced husband is entitled and has not attained retirement age (as defined in section 416(*l*) of this title) (but only if he became so entitled prior to attaining age 60).

(d) Deductions from dependent's benefits on account of noncovered work outside the United States by old-age insurance beneficiary

(1)(A) Deductions shall be made from any wife's, husband's, or child's insurance benefit, based on the wages and self-employment income of an individual entitled to old-age insurance benefits, to which a wife, divorced wife, husband, divorced husband, or child is entitled, until the total of such deductions equals such wife's, husband's, or child's insurance benefit or benefits under section 402 of this title for any month in which such individual is under the age of seventy and for more than forty-five hours of which such individual engaged in noncovered remunerative activity outside the United States.

(B) When any divorced spouse is entitled to monthly benefits under section 402(b) or (c) of this title for any month and such divorced spouse has been so divorced for not less than 2 years, the benefit to which he or she is entitled for such month on the basis of the wages and self-employment income of the individual entitled to old-age insurance benefits referred to in subparagraph (A) shall be determined without regard to deductions under this paragraph as a result of excess earnings of such individual, and the benefits of all other individuals who are entitled for such month to monthly benefits under section 402 of this title on the basis of the wages and self-employment income of such individual referred to in subparagraph (A) shall be determined as if no such divorced spouse were entitled to benefits for such month.

(2) Deductions shall be made from any child's insurance benefit to which a child who has attained the age of eighteen is entitled, or from any mother's or father's insurance benefit to which a person is entitled, until the total of such deductions equals such child's insurance benefit or benefits or mother's or father's insurance benefit or benefits under section 402 of this title for any month in which such child or person entitled to mother's or father's insurance benefits is married to an individual under the age of seventy who is entitled to old-age insurance benefits and for more than forty-five hours of which such individual engaged in noncovered remunerative activity outside the United States.

[*See main edition for text of* (e)]

(f) Months to which earnings are charged

For purposes of subsection (b) of this section—

(1) The amount of an individual's excess earnings (as defined in paragraph (3) shall be charged to months as follows: There shall be charged to the first month of such taxable year an amount of his excess earnings equal to the sum of the payments to which he and all other persons (excluding divorced spouses referred to in subsection (b)(2) of this section) are entitled for such month under section 402 of this title on the basis of his wages and self-employment income (or the total of

his excess earnings if such excess earnings are less than such sum), and the balance, if any, of such excess earnings shall be charged to each succeeding month in such year to the extent, in the case of each such month, of the sum of the payments to which such individual and all such other persons are entitled for such month under section 402 of this title on the basis of his wages and self-employment income, until the total of such excess has been so charged. Where an individual is entitled to benefits under section 402(a) of this title and other persons (excluding divorced spouses referred to in subsection (b)(2) of this section) are entitled to benefits under section 402(b), (c), or (d) of this title on the basis of the wages and self-employment income of such individual, the excess earnings of such individual for any taxable year shall be charged in accordance with the provisions of this subsection before the excess earnings of such persons for a taxable year are charged to months in such individual's taxable year. Notwithstanding the preceding provisions of this paragraph but subject to section 402(s) of this title, no part of the excess earnings of an individual shall be charged to any month (A) for which such individual was not entitled to a benefit under this subchaptor, (B) in which such individual was age seventy or over, (C) in which such individual, if a child entitled to child's insurance benefits, has attained the age of 18, (D) for which such individual is entitled to widow's insurance benefits and has not attained retirement age (as defined in section 416(*l*) of this title) (but only if she became so entitled prior to attaining age 60), or widower's insurance benefits and has not attained retirement age (as defined in section 416(*l*) of this title) (but only if he became so entitled prior to attaining age 60), (E) in which such individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5) of this subsection) of more than the applicable exempt amount as determined under paragraph (8), if such month is in the taxable year in which occurs the first month after December 1977 that is both (i) a month for which the individual is entitled to benefits under subsection (a), (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title (without having been entitled for the preceding month to a benefit under any other of such subsections), and (ii) a month in which the individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5)) of more than the applicable exempt amount as determined under paragraph (8), or (F) in which such individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5) of this subsection) of more than the applicable exempt amount as determined under paragraph (8), in the case of an individual entitled to benefits under section 402(b) or (c) of this title (but only by reason of having a child in his or her care within the meaning of paragraph (1)(B) of subsection (b) or (c) of this section, as may be applicable) or under section 402(d) or (g) of this title, if such month is in a year in which such entitlement ends for a reason other than the death of such individual, and such individual is not entitled to any benefits under this subchapter for the month following the month during which such entitlement under section 402(b), (d), or (g) of this title ended.

[*See main edition for text of (2) to (4)*]

(5) [*See main edition for text of (A)*]

(B) For purposes of this section—

[*See main edition for text of (i)*]

(ii) an individual's net loss from self-employment for any taxable year is the excess of the deductions (plus his distributive share of loss described in section 702(a)(8) of the Internal Revenue Code of 1986 taken into account under clause (i) over the gross income (plus his distributive share of income so described) taken into account under clause (i).

(C) For purposes of this subsection, an individual's wages shall be computed without regard to the limitations as to amounts of remuneration specified in subsections (a), (g)(2), (g)(3), (h)(2), and (j) of section 409 of this title; and in making such computation services which do not constitute employment as defined in section 410 of this title, performed within the United States by the individual as an employee or performed outside the United States in the active military or naval service of the United States, shall be deemed to be employment as so defined if the remuneration for such services is not includible in computing his net earnings or net loss from self-employment. The term "wages" does not include—

(i) the amount of any payment made to, or on behalf of, an employee or any of his dependents (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement, or

(ii) any payment or series of payments by an employer to an employee or any of his dependents upon or after the termination of the employee's employment relationship because of retirement after attaining an age specified in a plan referred to in section 409(m)(2) of this title or in a pension plan of the employer.

(D) In the case of—

(i) an individual who has attained retirement age (as defined in section 416(*l*) of this title) on or before the last day of the taxable year, and who shows to the satisfaction of the Secretary that he or she is receiving royalties attributable to a copyright or patent obtained before the taxable year in which he or she attained such age and that the property to which the copyright or patent relates was created by his or her own personal efforts, or

[*See main edition for text of (ii)*]

there shall be excluded from gross income any such royalties or other income.

[*See main edition for text of (6)*]

(7) Where an individual's excess earnings are charged to a month and the excess earnings so charged are less than the total of the payments (without regard to such charging) to which all persons (excluding divorced spouses referred to in subsection (b)(2) of this section) are entitled under section 402 of this title for such month on the basis of his wages and self-employment income, the difference between such total and the excess so charged to such month shall be paid (if it is otherwise payable under this subchapter) to such individual and other persons in the proportion that the benefit to which each of them is entitled (without regard to such charging, without the application of section 402(k)(3) of this title, and prior to the application of section 403(a) of this title) bears to the total of the benefits to which all of them are entitled.

(8)(A) Whenever the Secretary pursuant to section 415(i) of this title increases benefits effective with the month of December following a cost-of-living computation quarter [2] he shall also determine and publish in the Federal Register on or before November 1 of the calendar year in which such quarter occurs the new exempt amounts (separately stated for individuals described in subparagraph (D) and for other individuals) which are to be applicable (unless prevented from becoming effective by subparagraph (C)) with respect to taxable years ending in (or with the close of) the calendar year after the calendar year in which such benefit increase is effective (or, in the case of an individual who dies during the calendar year after the calendar year in which the benefit increase is effective, with respect to such individual's taxable year which ends, upon his death, during such year).

[*See main edition for text of (B) and (C)*]

(D) Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age (as defined in section 416(*l*) of this title) before the close of the taxable year involved—

[*See main edition for text of (i) to (v)*]

(9) For purposes of paragraphs (3), (5)(D)(i), and (8)(D), the term "retirement age (as defined in section 416(*l*) of this title)", with respect to any individual entitled to monthly insurance benefits under section 402 of this title, means the retirement age (as so defined) which is applicable in the case of old-age insurance benefits, regardless of whether or not the particular benefits to which the individual is entitled (or the only such benefits) are old-age insurance benefits.

[*See main edition for text of (g)*]

(h) Report of earnings to Secretary

[*See main edition for text of (1) to (3)*]

(4) The Secretary shall develop and implement procedures in accordance with this subsection to avoid paying more than the correct amount of benefits to any individual under this subchapter as a result of such individual's failure to file a correct report or estimate of earnings or wages. Such procedures may include identifying categories of individuals who are likely to be paid more than the correct amount of benefits and requesting that they estimate their earnings or wages more frequently than other persons subject to deductions under this section on account of earnings or wages.

[*See main edition for text of (i) and (j)*]

(k) Noncovered remunerative activity outside the United States

An individual shall be considered to be engaged in noncovered remunerative activity outside the United States if he performs services outside the United States as an employee and such services do not constitute employment as defined in section 410 of this title and are not performed in the active military or naval service of the United States, or if he carries on a trade or business outside the United States (other than the performance of service as an employee) the net income or loss of which (1) is not includible in computing his net earnings from self-employment for a taxable year and (2) would not be excluded from net earnings from self-employment, if carried on in the United States, by any of the numbered paragraphs of section 411(a) of this title. When used in the preceding sentence with respect to a trade or business (other than the performance of service as an employee), the term "United States" does not include the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa in the case of an alien who is not a resident of the United States (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa); and the term "trade or business" shall have the same meaning as when used in section 162 of the Internal Revenue Code of 1986.

[*See main edition for text of (l)*]

(Aug. 14, 1935, ch. 531, title II, § 203, 49 Stat. 623; Aug. 10, 1939, ch. 666, title II, § 201, 53 Stat. 1362, 1367; Aug. 10, 1946, ch. 951, title IV, § 406, 60 Stat. 988; Aug. 28, 1950, ch. 809, title I, §§ 102(a), 103(a), 64 Stat. 489; July 18, 1952, ch. 945, §§ 2(b)(2), 4(a)-(d), 66 Stat. 768, 773; Sept. 1, 1954, ch. 1206, title I, §§ 102(e)(7), 103(a)-(h), (i)(3), 112(a), 68 Stat. 1070, 1073-1077, 1078, 1085; Aug. 1, 1956, ch. 836, title I, §§ 101(d)-(g), 102(d)(11), 107(a), 112 (a), (b), 70 Stat. 808, 814, 829, 831; Aug. 28, 1958, Pub. L. 85-840, title I, § 101(f), title II, § 205(j), (k), title III, §§ 307(f), 308(a)-(e), 72 Stat. 1017, 1024, 1032, 1033; Sept. 13, 1960, Pub. L. 86-778, title I, § 103(b), title II, §§ 209(a), 211(a)-(h), title III, § 302(a), 74 Stat. 936, 953-957, 960; June 30, 1961, Pub. L. 87-64, title I, § 108(a), 75 Stat. 140; July 30, 1965, Pub. L. 89-97, title III, §§ 301(c), 306(c)(10)-(12),

[2] So in original. Probably should be followed by a comma.

308(d)(6)-(8), 310(a), 325(a), 79 Stat. 363, 373, 378-380, 399; Jan. 2, 1968, Pub. L. 90-248, title I, §§ 101(b), 104(d)(1), 107(a), 160, 161(a), (b), 163(a)(1), 81 Stat. 826, 832, 834, 870, 872; Dec. 30, 1969, Pub. L. 91-172, title X, § 1002(b)(1), 83 Stat. 739; Mar. 17, 1971, Pub. L. 92-5, title II, § 201(b), 85 Stat. 8; July 1, 1972, Pub. L. 92-336, title II, §§ 201(b), (h)(1), 202(a)(2)(A), (B), 86 Stat. 410, 411, 415; Oct. 30, 1972, Pub. L. 92-603, title I, §§ 101(b), 102(c), 103(c), 105(a), (b), 106(a), 107(b)(1), (2), 144(a)(2), (3), 86 Stat. 1334, 1336, 1340-1343, 1370; July 9, 1973, Pub. L. 93-66, title II, § 202(a)-(c), 87 Stat. 153; Dec. 31, 1973, Pub. L. 93-233, §§ 3(k), 18(a), 87 Stat. 953, 967; Jan. 2, 1976, Pub. L. 94-202, § 8(i), 89 Stat. 1140; Dec. 20, 1977, Pub. L. 95-216, title II, §§ 202, 204(e), title III, §§ 301(a), (b), (c)(1), (d), 302(a)-(d), 303(a), 353(a), 91 Stat. 1524, 1528, 1530, 1531, 1552; June 9, 1980, Pub. L. 96-265, title I, § 101(a)-(b)(2), 94 Stat. 442; Oct. 19, 1980, Pub. L. 96-473, §§ 1(a), 3(a), 4(a), 6(b), 94 Stat. 2263-2265; Aug. 13, 1981, Pub. L. 97-35, title XXII, §§ 2201(c)(6), 2206(b)(2)-(4), 95 Stat. 831, 838; Dec. 29, 1981, Pub. L. 97-123, § 2(f), 95 Stat. 1661; Apr. 20, 1983, Pub. L. 98-21, title I, §§ 111(a)(4), 132(b), title II, § 201(c)(1)(B), (2), title III, §§ 306(i), 309(f)-(h), 324(c)(4), 331(a), (b), 97 Stat. 72, 94, 109, 114, 116, 117, 125, 128, 129; July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2602(a), 2661(g)(1)(A), (2)(A), 2662(c)(1), 2663(a)(3), 98 Stat. 1127, 1157, 1159, 1161; Apr. 7, 1986, Pub. L. 99-272, title XII, § 12108(a), 100 Stat. 286; Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095.)

AMENDMENT OF SUBSECTION (f)(3)

Pub. L. 98-21, title III, § 347, Apr. 20, 1983, 97 Stat. 138, provided that, applicable only with respect to taxable years beginning after December 1989, and only in the case of individuals who have attained retirement age (as defined in section 416(l) of this title, subsection (f)(3) of this section is amended by striking out "50 per centum of his earnings for such year in excess of the product of the applicable exempt amount as determined under paragraph (8)" and inserting in lieu thereof the following: "33⅓ percent of his earnings for such year in excess of the product of the applicable exempt amount as determined under paragraph (8) in the case of an individual who has attained retirement age (as defined in section 416(l) of this title) before the close of such taxable year, or 50 percent of his earnings for such year in excess of sueh product in the case of any other individual".

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (f)(5)(B)(ii) and (k), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1986—Subsec. (a)(4). Pub. L. 99-272, § 12108(a)(1), struck out "preceding" after "pursuant to the" in first sentence.

Subsec. (a)(6). Pub. L. 99-272, § 12108(a)(2), substituted "(4), and (5)" for "and (5)" and "shall be reduced" for "whether or not such total benefits are otherwise subject to reduction under this subsection but after any reduction under this subsection which would otherwise be applicable, shall be, reduced or further reduced".

Subsecs. (f)(5)(B)(ii), (k). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1984—Subsec. (a)(8). Pub. L. 98-369, § 2663(a)(3)(A), inserted a period at end of par. (8).

Subsec. (d)(1)(A). Pub. L. 98-369, § 2661(g)(1)(A)(i), substituted "for more than forty-five hours of which such individual engaged" for "on seven or more different calendar days of which he engaged".

Subsec. (d)(2). Pub. L. 98-369, § 2663(a)(3)(B), substituted "an individual under the age of seventy who is entitled" for "an individual who is entitled".

Pub. L. 98-369, § 2661(g)(1)(A)(ii), substituted "for more than forty-five hours" for "on seven or more different calendar days".

Subsec. (f)(5)(B)(ii). Pub. L. 98-369, § 2663(a)(3)(C), substituted "702(a)(8)" for "702(a)(9)".

Subsec. (f)(5)(D)(i). Pub. L. 98-369, § 2662(c)(1), made a clarifying amendment to Pub. L. 98-21, § 201(c)(1)(B). See 1983 Amendment note below.

Subsec. (f)(8)(B), (C). Pub. L. 98-369, § 2663(a)(3)(D), realigned margins of subpars. (B) and (C).

Subsec. (f)(9). Pub. L. 98-369, § 2661(g)(2)(A), added par. (9).

Subsec. (h)(4). Pub. L. 98-369, § 2602(a), added par. (4).

1983—Subsec. (a)(3)(A). Pub. L. 98-21, § 331(a)(1), amended cl. (ii) generally, substituting provisions relating to an amount (I) initially equal to the product of 1.75 and the primary insurance amount that would be computed under section 415(a)(1) of this title, for January of the year determined for purposes of this clause under the following two sentences, with respect to average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined for that year under section 430 of this title, and (II) thereafter increased in accordance with the provisions of section 415(i)(2)(A)(ii) of this title, for provisions relating to an amount equal to the product of 1.75 and the primary insurance amount that would be computed under section 415(a)(1) of this title for that month with respect to average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined for that year under section 430 of this title, and inserted provisions following cl. (ii).

Subsec. (a)(7). Pub. L. 98-21, § 331(a)(2), substituted "the amount determined in accordance with the provisions of paragraph (3)(A)(ii) of this subsection, except that for this purpose the references to subparagraph (A) in the last two sentences of paragraph (3)(A) shall be deemed to be references to paragraph (7)" for "the product of 1.75 and the primary insurance amount that would be computed under section 415(a)(1) of this title for that month with respect to average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined under section 430 of this title for the year in which that month occurs".

Subsec. (b)(1). Pub. L. 98-21, § 309(f), inserted "or father's" after "mother's" in provisions following subpar. (B).

Pub. L. 98-21, § 132(b)(1)(A)(iii), substituted "clauses (A) and (B)" for "clauses (1) and (2)" in provisions following subpar. (B).

Pub. L. 98-21, § 132(b)(1)(A)(i), (ii), (iv), designated existing provisions of subsec. (b) as par. (1), and in par. (1), as so designated, redesignated cls. (1) and (2) as (A) and (B), respectively, and cls. (A) and (B) as (i) and (ii), respectively.

Subsec. (b)(1)(i). Pub. L. 98-21, § 331(b), substituted "first sentence of paragraph (4)" for "penultimate sentence".

Subsec. (b)(2). Pub. L. 98-21, § 132(b)(1)(A)(v), added par. (2).

Subsec. (c). Pub. L. 98-21, § 201(c)(2), substituted "retirement age (as defined in section 416(l) of this title)" for "age sixty-five".

Pub. L. 98-21, § 201(c)(1)(B), substituted "retirement age (as defined in section 416(*l*) of this title)" for "age 65" wherever appearing in provisions following par. (4).

Pub. L. 98-21, § 309(g), amended subsec. (c) generally, substituting in par. (1) specification of more than forty-five hours of nonrecovered remunerative activity for specification of seven or more different days of such activity, and in pars. (2) to (4) provisions not distinguishing between the sexes for provisions relating only to the entitlements of women, and in provisions following par. (4) inserting "or surviving divorced husband" after "widower".

Subsec. (d)(1). Pub. L. 98-21, § 309(h), inserted "divorced husband," after "husband,".

Pub. L. 98-21, § 132(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (d)(2). Pub. L. 98-21, § 309(h), inserted "or father's" after "mother's" in three places.

Subsec. (f)(1). Pub. L. 98-21, § 132(b)(1)(B)(i), inserted "(excluding divorced spouses referred to in subsection (b)(2) of this section)" after "and all other persons" and after "other persons" and inserted "such" after "payments to which such individual and all" in first sentence.

Subsec. (f)(1)(D). Pub. L. 98-21, § 201(c)(1)(B), substituted "retirement age (as defined in section 416(*l*) of this title)" for "age 65" in two places.

Subsec. (f)(1)(F). Pub. L. 98-21, § 306(i), substituted "section 402(b) or (c) of this title (but only by reason of having a child in his or her care within the meaning of paragraph (1)(B) of subsection (b) or (c) of this section, as may be applicable)" for "section 402(b) of this title (but only by reason of having a child in her care within the meaning of paragraph (1)(B) of that subsection)".

Subsec. (f)(5)(C). Pub. L. 98-21, § 324(c)(4), inserted provision excluding from "wages" certain payments on account of retirement or under a pension plan of the employer.

Subsec. (f)(5)(D)(i). Pub. L. 98-21, § 201(c)(1)(B), as amended by Pub. L. 98-369, § 2662(c)(1), substituted "retirement age (as defined in section 416(*l*) of this title)" for "the age of 65".

Subsec. (f)(7). Pub. L. 98-21, § 132(b)(1)(B)(ii), inserted "(excluding divorced spouses referred to in subsection (b)(2) of this section)" after "all persons".

Subsec. (f)(8)(A). Pub. L. 98-21, § 111(a)(4), substituted "December" for "June".

Subsec. (f)(8)(D). Pub. L. 98-21, § 201(c)(1)(B), substituted "retirement age (as defined in section 416(*l*) of this title)" for "age 65".

EFFECTIVE DATE OF 1986 AMENDMENT

Section 12108(b) of Pub. L. 99-272, as amended by Pub. L. 99-514, title XVIII, § 1895(a), Oct. 22, 1986, 100 Stat. 2931, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to benefits payable for months after December 1986."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2602(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [enacting subsec. (h)(4) of this section] shall be effective upon the date of the enactment of this Act [July 18, 1984]."

Section 2661(g)(1)(B) of Pub. L. 98-369 provided that: "The amendments made by subparagraph (A) [amending subsec. (d) of this section] shall apply only with respect to months beginning with the second month after the month in which this Act is enacted [July 1984]."

Section 2661(g)(2)(B) of Pub. L. 98-369 provided that: "The amendment made by subparagraph (A) [enacting subsec. (f)(9) of this section] shall be effective as though it had been enacted on April 20, 1983, as a part of section 201 of the Social Security Amendments of 1983 [section 201 of Pub. L. 98-21]."

Amendment by section 2662 of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2664(a) of Pub. L. 98-369, set out as a note under section 401 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 111(a) of Pub. L. 98-21 applicable with respect to cost-of-living increases determined under section 415(i) of this title for years after 1982, see section 111(a)(8) of Pub. L. 98-21, set out as a note under section 402 of this title.

Section 132(c)(2) of Pub. L. 98-21 provided that: "The amendments made by subsection (b) [amending subsecs. (b), (d), and (f) of this section] shall apply with respect to monthly insurance benefits for months after December 1984."

Amendment by sections 306(i) and 309(f)-(h) of Pub. L. 98-21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 98-21, set out as a note under section 402 of this title.

Amendment by section 324 of Pub. L. 98-21 applicable to remuneration paid after Dec. 31, 1983, except for certain employer contributions made during 1984 under a qualified cash or deferred arrangement, and except in the case of an agreement with certain nonqualified deferred compensation plans in existence on Mar. 24, 1983, see section 324(d) of Pub. L. 98-21, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Section 331(c) of Pub. L. 98-21 provided that: "The amendments made by subsection (a) [amending subsec. (a)(3)(A), (7) of this section] shall be effective with respect to payments made for months after December 1983."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 402, 408, 415, 423, 424a, 1382a of this title; title 5 sections 8349, 8421, 8421a, 8442; title 10 section 1451; title 26 sections 86, 1402; title 30 sections 922, 932; title 45 sections 231a, 231q.

§ 404. Overpayments and underpayments

(a) Procedure for adjustment or recovery

(1) Whenever the Secretary finds that more or less than the correct amount of payment has been made to any person under this subchapter, proper adjustment or recovery shall be made, under regulations prescribed by the Secretary, as follows:

(A) With respect to payment to a person of more than the correct amount, the Secretary shall decrease any payment under this subchapter to which such overpaid person is entitled, or shall require such overpaid person or his estate to refund the amount in excess of the correct amount, or shall decrease any payment under this subchapter payable to his estate or to any other person on the basis of the wages and self-employment income which were the basis of the payments to such overpaid person, or shall apply any combination of the foregoing. A payment made under this subchapter on the basis of an erroneous report of death by the Department of Defense of an individual in the line of duty while he is a member of the uniformed services (as defined in section 410(m) of this title)

on active duty (as defined in section 410(*l*) of this title) shall not be considered an incorrect payment for any month prior to the month such Department notifies the Secretary that such individual is alive.

(B) With respect to payment to a person of less than the correct amount, the Secretary shall make payment of the balance of the amount due such underpaid person, or, if such person dies before payments are completed or before negotiating one or more checks representing correct payments, disposition of the amount due shall be made in accordance with subsection (d) of this section.

(2) Notwithstanding any other provision of this section, when any payment of more than the correct amount is made to or on behalf of an individual who has died, and such payment—

(A) is made by direct deposit to a financial institution;

(B) is credited by the financial institution to a joint account of the deceased individual and another person; and

(C) such other person was entitled to a monthly benefit on the basis of the same wages and self-employment income as the deceased individual for the month preceding the month in which the deceased individual died,

the amount of such payment in excess of the correct amount shall be treated as a payment of more than the correct amount to such other person.

[*See main edition for text of (b) to (e)*]

(As amended Apr. 7, 1986, Pub. L. 99-272, title XII, § 12113(a), 100 Stat. 288.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-272 redesignated existing subsec. (a) as (a)(1) and pars. (1) and (2) thereof as subpars. (A) and (B), respectively, and added par. (2).

EFFECTIVE DATE OF 1986 AMENDMENT

Section 12113(c) of Pub. L. 99-272 provided that: "The amendments made by this section [amending sections 404 and 1383 of this title] shall apply only in the case of deaths of which the Secretary is first notified on or after the date of the enactment of this Act [Apr. 7, 1986]."

§ 405. Evidence, procedure, and certification for payments

[*See main edition for text of (a)*]

(b) Administrative determination of entitlement to benefits; findings of fact; hearings; investigations; evidentiary hearings in reconsiderations of disability benefit terminations

(1) The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for a payment under this subchapter. Any such decision by the Secretary which involves a determination of disability and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Secretary's determination and the reason or reasons upon which it is based. Upon request by any such individual or upon request by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, surviving divorced father, husband, divorced husband, widower, surviving divorced husband, child, or parent who makes a showing in writing that his or her rights may be prejudiced by any decision the Secretary has rendered, he shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse his findings of fact and such decision. Any such request with respect to such a decision must be filed within sixty days after notice of such decision is received by the individual making such request. The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this subchapter. In the course of any hearing, investigation, or other proceeding, he may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Secretary even though inadmissible under rules of evidence applicable to court procedure.

[*See main edition for text of (2)*]

(c) Wage records

(1) For the purposes of this subsection—

[*See main edition for text of (A) and (B)*]

(C) The term "survivor" means an individual's spouse, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father, child, or parent, who survives such individual.

(D) The term "period" when used with respect to self-employment income means a taxable year and when used with respect to wages means—

(i) a quarter if wages were reported or should have been reported on a quarterly basis on tax returns filed with the Secretary of the Treasury or his delegate under section 6011 of the Internal Revenue Code of 1986 or regulations thereunder (or on reports filed by a State under section 418(e) [1] of this title (as in effect prior to December 31, 1986) or regulations thereunder),

[*See main edition for text of (ii) and (iii)*]

(2) [*See main edition for text of (A) to (C)*]

(D) The Secretary shall issue a social security card to each individual at the time of the issuance of a social security account number to such individual. The social security card shall be made of banknote paper, and (to the maximum extent practicable) shall be a card which cannot be counterfeited.

[*See main edition for text of (3) and (4)*]

[1] See References in Text note below.

(5) After the expiration of the time limitation following any year in which wages were paid or alleged to have been paid to, or self-employment income was derived or alleged to have been derived by, an individual, the Secretary may change or delete any entry with respect to wages or self-employment income in his records of such year for such individual or include in his records of such year for such individual any omitted item of wages or self-employment income but only—

[*See main edition for text of* (A) *to* (C)]

(D) to transfer items to records of the Railroad Retirement Board if such items were credited under this subchapter when they should have been credited under the Railroad Retirement Act of 1937 or 1974 [45 U.S.C. 228a et seq., 231 et seq.], or to enter items transferred by the Railroad Retirement Board which have been credited under the Railroad Retirement Act of 1937 or 1974 when they should have been credited under this subchapter;

(E) to delete or reduce the amount of any entry which is erroneous as a result of fraud;

(F) to conform his records to—

(i) tax returns or portions thereof (including information returns and other written statements) filed with the Commissioner of Internal Revenue under title VIII of the Social Security Act [42 U.S.C. 1001 et seq.], under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code of 1939, under chapter 2 or 21 of the Internal Revenue Code of 1986, or under regulations made under authority of such title, subchapter, or chapter;

(ii) wage reports filed by a State pursuant to an agreement under section 418 of this title or regulations of the Secretary thereunder; or

(iii) assessments of amounts due under an agreement pursuant to section 418 of this title (as in effect prior to December 31, 1986), if such assessments are made within the period specified in subsection (q)[1] of such section (as so in effect), or allowances of credits or refunds of overpayments by a State under an agreement pursuant to such section;

except that no amount of self-employment income of an individual for any taxable year (if such return or statement was filed after the expiration of the time limitation following the taxable year) shall be included in the Secretary's records pursuant to this subparagraph;

[*See main edition for text of* (G) *and* (H)]

(I) to enter items which constitute remuneration for employment under subsection (o) of this section, such entries to be in accordance with certified reports of records made by the Railroad Retirement Board pursuant to section 5(k)(3) of the Railroad Retirement Act of 1937 [45 U.S.C. 228e(k)(3)] or section 7(b)(7) of the Railroad Retirement Act of 1974 [45 U.S.C. 231f(b)(7)]; or

[*See main edition for text of* (J), (6) *to* (8); (d)]

(e) Judicial enforcement of subpenas; contempt

In case of contumacy by, or refusal to obey a subpena duly served upon, any person, any district court of the United States for the judicial district in which said person charged with contumacy or refusal to obey is found or resides or transacts business, upon application by the Secretary, shall have jurisdiction to issue an order requiring such person to appear and give testimony, or to appear and produce evidence, or both; any failure to obey such order of the court may be punished by said court as contempt thereof.

[*See main edition for text of* (f) *and* (g)]

(h) Finality of Secretary's decision

The findings and decision of the Secretary after a hearing shall be binding upon all individuals who were parties to such hearing. No findings of fact or decision of the Secretary shall be reviewed by any person, tribunal, or governmental agency except as herein provided. No action against the United States, the Secretary, or any officer or employee thereof shall be brought under section 1331 or 1346 of title 28 to recover on any claim arising under this subchapter.

(i) Certification for payment

Upon final decision of the Secretary, or upon final judgment of any court of competent jurisdiction, that any person is entitled to any payment or payments under this subchapter, the Secretary shall certify to the Managing Trustee the name and address of the person so entitled to receive such payment or payments, the amount of such payment or payments, and the time at which such payment or payments should be made, and the Managing Trustee, through the Fiscal Service of the Department of the Treasury, and prior to any action thereon by the General Accounting Office, shall make payment in accordance with the certification of the Secretary (except that in the case of (A) an individual who will have completed ten years of service creditable under the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.] or the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], (B) the wife or husband of such an individual, (C) any survivor of such an individual if such survivor is entitled, or could upon application become entitled, to an annuity under section 2 of the Railroad Retirement Act of 1974 [45 U.S.C. 231a], and (D) any other person entitled to benefits under section 402 of this title on the basis of the wages and self-employment income of such an individual (except a survivor of such an individual where such individual did not have a current connection with the railroad industry, as defined in the Railroad Retirement Act of 1974, at the time of his death), such certification shall be made to the Railroad Retirement Board which shall provide for such payment or payments to such person on behalf of the Managing Trustee in accord-

[1] See References in Text note below.

ance with the provisions of the Railroad Retirement Act of 1974): *Provided*, That where a review of the Secretary's decision is or may be sought under subsection (g) of this section the Secretary may withhold certification of payment pending such review. The Managing Trustee shall not be held personally liable for any payment or payments made in accordance with a certification by the Secretary.

(j) Certification for direct or indirect payment; investigation; accountability monitoring; exceptions; reports to Congress

(1) When it appears to the Secretary that the interest of an applicant entitled to a payment would be served thereby, certification of payment may be made, regardless of the legal competency or incompetency of the individual entitled thereto, either for direct payment to such applicant, or for his use and benefit to a relative or some other person.

(2) Any certification made under paragraph (1) for payment to a person other than the individual entitled to such payment must be made on the basis of an investigation, carried out either prior to such certification or within forty-five days after such certification, and on the basis of adequate evidence that such certification is in the interest of the individual entitled to such payment (as determined by the Secretary in regulations). The Secretary shall ensure that such certifications are adequately reviewed.

(3)(A) In any case where payment under this subchapter is made to a person other than the individual entitled to such payment, the Secretary shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Secretary shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

(B) Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a parent or spouse of the individual entitled to such payment who lives in the same household as such individual. The Secretary shall require such parent or spouse to verify on a periodic basis that such parent or spouse continues to live in the same household as such individual.

(C) Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a State institution. In such cases, the Secretary shall establish a system of accountability monitoring for institutions in each State.

(D) Subparagraph (A) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the other person to whom such payment is made is the institution.

(E) Notwithstanding subparagraphs (A), (B), (C), and (D), the Secretary may require a report at any time from any person receiving payments on behalf of another, if the Secretary has reason to believe that the person receiving such payments is misusing such payments.

(4)(A) The Secretary shall make an initial report to each House of the Congress on the implementation of paragraphs (2) and (3) within 270 days after October 9, 1984.

(B) The Secretary shall include as a part of the annual report required under section 904 of this title, information with respect to the implementation of paragraphs (2) and (3), including the number of cases in which the payee was changed, the number of cases discovered where there has been a misuse of funds, how any such cases were dealt with by the Secretary, the final disposition of such cases, including any criminal penalties imposed, and such other information as the Secretary determines to be appropriate.

[*See main edition for text of* (*k*)]

(*l*) Delegation of powers and duties by Secretary

The Secretary is authorized to delegate to any member, officer, or employee of the Department of Health and Human Services designated by him any of the powers conferred upon him by this section, and is authorized to be represented by his own attorneys in any court in any case or proceeding arising under the provisions of subsection (e) of this section.

[*See main edition for text of* (*m*) *to* (o)]

(p) Special rules in case of Federal service

(1) With respect to service included as employment under section 410 of this title which is performed in the employ of the United States or in the employ of any instrumentality which is wholly owned by the United States, including service, performed as a member of a uniformed service to which the provisions of subsection (*l*)(1) of such section are applicable, and including service, performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act [22 U.S.C. 2501 et seq.], to which the provisions of section 410(o) of this title are applicable, the Secretary shall not make determinations as to whether an individual has performed such service, the periods of such service, the amounts of remuneration for such service which constitute wages under the provisions of section 409 of this title, or the periods in which or for which such wages were paid, but shall accept the determinations with respect thereto of the head of the appropriate Federal agency or instrumentality, and of such agents as such head may designate, as evidenced by returns filed in accordance with the provisions of section 3122 of the Internal Revenue Code of 1986 and certifications made pursuant to this subsection. Such determinations shall be final and conclusive.

[*See main edition for text of* (2) *and* (3); (*q*)]

(r) Use of death certificates to correct program information

(1) The Secretary shall undertake to establish a program under which—

(A) States (or political subdivisions thereof) voluntarily contract with the Secretary to furnish the Secretary periodically with information (in a form established by the Secretary in consultation with the States) concerning individuals with respect to whom death

certificates (or equivalent documents maintained by the States or subdivisions) have been officially filed with them; and

(B) there will be (i) a comparison of such information on such individuals with information on such individuals in the records being used in the administration of this chapter, (ii) validation of the results of such comparisons, and (iii) corrections in such records to accurately reflect the status of such individuals.

(2) Each State (or political subdivision thereof) which furnishes the Secretary with information on records of deaths in the State or subdivision under this subsection may be paid by the Secretary from amounts available for administration of this chapter the reasonable costs (established by the Secretary in consultations with the States) for transcribing and transmitting such information to the Secretary.

(3) In the case of individuals with respect to whom federally funded benefits are provided by (or through) a Federal or State agency other than under this chapter, the Secretary shall to the extent feasible provide such information through a cooperative arrangement with such agency, for ensuring proper payment of those benefits with respect to such individuals if—

(A) under such arrangement the agency provides reimbursement to the Secretary for the reasonable cost of carrying out such arrangement, and

(B) such arrangement does not conflict with the duties of the Secretary under paragraph (1).

(4) The Secretary may enter into similar agreements with States to provide information for their use in programs wholly funded by the States if the requirements of subparagraphs (A) and (B) of paragraph (3) are met.

(5) The Secretary may use or provide for the use of such records as may be corrected under this section, subject to such safeguards as the Secretary determines are necessary or appropriate to protect the information from unauthorized use or disclosure, for statistical and research activities conducted by Federal and State agencies.

(6) Information furnished to the Secretary under this subsection may not be used for any purpose other than the purpose described in this subsection and is exempt from disclosure under section 552 of title 5 and from the requirements of section 552a of such title.

(7) The Secretary shall include information on the status of the program established under this section and impediments to the effective implementation of the program in the 1984 report required under section 904 of this title.

(Aug. 14, 1935, ch. 531, title II, § 205, 49 Stat. 624; Aug. 10, 1939, ch. 666, title II, § 201, 53 Stat. 1362, 1368; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Aug. 28, 1950, ch. 809, title I, §§ 101(b)(2), 108(a)-(c), 109(b), 64 Stat. 488, 518, 523; July 18, 1952, ch. 945, § 5(b), 66 Stat. 775; Sept. 1, 1954, ch. 1206, title I, § 101(c)(3), 68 Stat. 1054; Aug. 1, 1956, ch. 836, title I, §§ 107(b), 111(a), 117, 70 Stat. 829, 831, 834; Aug. 1, 1956, ch. 837, title IV, § 402(b), 70 Stat. 871; June 11, 1960, Pub. L. 86-507, § 1(35), 74 Stat. 202; Sept. 13, 1960, Pub. L. 86-778, title I, §§ 102(i)(2), 103(j)(2)(E), title VII, § 702(a), 74 Stat. 933, 938, 993; Sept. 21, 1961, Pub. L. 87-293, title II, § 202(b)(3), 75 Stat. 626; July 30, 1965, Pub. L. 89-97, title III, §§ 308(d)(9), (10), 330, 79 Stat. 379, 401, Jan. 2, 1968, Pub. L. 90-248, title I, § 171(a), 81 Stat. 876; Oct. 15, 1970, Pub. L. 91-452, title II, § 236, 84 Stat. 930; Oct. 30, 1972, Pub. L. 92-603, title I, § 137, 86 Stat. 1364; Oct. 16, 1974, Pub. L. 93-445, title III, §§ 302(a), 303, 88 Stat. 1358; Jan. 2, 1976, Pub. L. 94-202, § 4, 89 Stat. 1136; Oct. 4, 1976, Pub. L. 94-455, title XII, § 1211(b), 90 Stat. 1711; Dec. 20, 1977, Pub. L. 95-216, title III, § 353(f)(2), 91 Stat. 1554; Nov. 6, 1978, Pub. L. 95-600, title VII, § 703(j)(14)(B), 92 Stat. 2942; June 9, 1980, Pub. L. 96-265, title III, §§ 305(a), 307, 94 Stat. 457, 458; Jan. 12, 1983, Pub. L. 97-455, § 4(a), 96 Stat. 2499; Apr. 20, 1983, Pub. L. 98-21, title III, §§ 301(d), 309(i), 336, 345(a), 97 Stat. 111, 117, 130, 137; July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2661(h)(1), (2), 2663(a)(4), (j)(4), 98 Stat. 1157, 1162, 1171; Oct. 9, 1984, Pub. L. 98-460, § 16(a), 98 Stat. 1809; Oct. 21, 1986, Pub. L. 99-509, title IX, § 9002(c)(2)(A), (B), 100 Stat. 1971; Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095.)

REFERENCES IN TEXT

Subsecs. (e) and (q) of section 418 of this title, referred to in subsec. (c)(1)(D)(i), (5)(F)(iii), which related to payments and reports by States, and to time limitation on assessments, respectively, were repealed, and subsec. (f) of section 418 of this title was redesignated as subsec. (e), by Pub. L. 99-509, title IX, § 9002(c)(1), Oct. 21, 1986, 100 Stat. 1971.

The Railroad Retirement Act of 1937, referred to in subsecs. (c)(5)(D) and (i), is act Aug. 29, 1935, ch. 812, 49 Stat. 867, as amended generally. See par. for Railroad Retirement Act of 1974 below.

The Railroad Retirement Act of 1974, referred to in subsecs. (e)(5)(D), (i), and (o), is title I of Pub. L. 93-445, Oct. 16, 1974, 88 Stat. 1305, and is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. Such title I completely amended and revised the Railroad Retirement Act of 1937 (approved June 24, 1937, ch. 382, 50 Stat. 307), and as thus amended and revised, the 1937 Act was redesignated the Railroad Retirement Act of 1974. Previously, the 1937 Act had completely amended and revised the Railroad Retirement Act of 1935 (approved Aug. 29, 1935, ch. 812, 49 Stat. 967). Section 201 of the 1937 Act provided that the 1935 Act, as in force prior to amendment by the 1937 Act, may be cited as the Railroad Retirement Act of 1935; and that the 1935 Act, as amended by the 1937 Act may be cited as the Railroad Retirement Act of 1937. The Railroad Retirement Acts of 1935 and 1937 were classified to subchapter II (§ 215 et seq.) and subchapter III (§ 228a et seq.), respectively, of chapter 9 of Title 45.

Subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (c)(5)(F)(i), were comprised of sections 480 to 482 and 1400 to 1432, respectively, and were repealed (subject to certain exceptions) by section 7851(a)(1)(A), (3) of the Internal Revenue Code of 1986.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1986 Code, see section 7852(b) of the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

Chapters 2 and 21 of the Internal Revenue Code of 1986, referred to in subsec. (c)(5)(F)(i), are classified to sections 1401 et seq. and 3101 et seq., respectively, of Title 26, Internal Revenue Code.

AMENDMENTS

1986—Subsec. (c)(1)(D)(i). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Pub. L. 99-509, § 9002(c)(2)(A), inserted "(as in effect prior to December 31, 1986)".

Subsec. (c)(5)(F)(i). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (c)(5)(F)(iii). Pub. L. 99-509, § 9002(c)(2)(B), inserted "(as in effect prior to December 31, 1986)" and "(as so in effect)".

Subsec. (p)(1). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1984—Subsec. (c)(5)(D). Pub. L. 98-369, § 2663(a)(4)(A), inserted "of 1937 or 1974" after "Railroad Retirement Act" in two places.

Subsec. (c)(5)(I). Pub. L. 98-369, § 2663(a)(4)(B), inserted "or section 7(b)(7) of the Railroad Retirement Act of 1974".

Subsec. (e). Pub. L. 98-369, § 2663(a)(4)(C), substituted "an order" for "on order".

Subsec. (h). Pub. L. 98-369, § 2663(a)(4)(D), substituted "section 1331 or 1346 of title 28" for "section 24 of the Judicial Code of the United States".

Subsec. (i). Pub. L. 98-369, § 2663(a)(4)(E), substituted "the Fiscal Service of the Department of the Treasury" for "the Division of Disbursement of the Treasury Department".

Subsec. (j). Pub. L. 98-460 designated existing provisions as par. (1) and added pars. (2) to (4).

Subsec. (l). Pub. L. 98-369, § 2663(j)(4), substituted "Department of Health and Human Services" for "Federal Security Agency".

Subsec. (p)(1). Pub. L. 98-369, § 2663(a)(4)(F), substituted "section 3122 of the Internal Revenue Code of 1954" for "section 1420(e) of the Internal Revenue Code of 1939".

Subsec. (r)(4). Pub. L. 98-369, § 2661(h)(1), substituted "subparagraphs (A) and (B) of paragraph (3)" for "paragraph (3)(A) and (B)".

Subsec. (r)(7). Pub. L. 98-369, § 2661(h)(2), substituted "this Act" for "the Act" which was translated as "this title".

1983—Subsec. (b). Pub. L. 98-21, §§ 301(d)(1), 309(l)(1), in par. (1) inserted "divorced husband," after "husband,", "surviving divorced husband," after "widower,", and "surviving divorced father," after "surviving divorced mother,".

Subsec. (c)(1)(C). Pub. L. 98-21, §§ 301(d)(2), 309(l)(2), inserted "surviving divorced husband," after "wife," and "surviving divorced father," after "surviving divorced mother,".

Subsec. (c)(2)(D). Pub. L. 98-21, § 345(a), added subpar. (D).

Subsec. (r). Pub. L. 98-21, § 336, added subsec. (r).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-509 effective with respect to payments due with respect to wages paid after Dec. 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to section 418(e)(2) of this title prior to Oct. 21, 1986, with certain exceptions, see section 9002(d) of Pub. L. 99-509 set out as a note under section 418 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 16(d) of Pub. L. 98-460 provided that: "The amendments made by this section [amending sections 405, 408, 1383, and 1383a of this title] shall become effective on the date of the enactment of this Act [Oct. 9, 1984], and, in the case of the amendments made by subsection (c) [amending sections 408 and 1383a of this title], shall apply with respect to violations occurring on or after such date."

Amendment by section 2661 of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2664(a) of Pub. L. 98-369, set out as a note under section 401 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by sections 301(d) and 309(l) of Pub. L. 98-21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 98-21, set out as a note under section 402 of this title.

Section 345(b) of Pub. L. 98-21 provided that: "The amendment made by this section [enacting subsec. (c)(2)(D) of this section] shall apply with respect to all new and replacement social security cards issued more than 193 days after the date of the enactment of this Act [Apr. 20, 1983]."

COUNTERFEITING OF SOCIAL SECURITY ACCOUNT NUMBER CARDS

Pub. L. 99-603, title I, § 101(f), Nov. 6, 1986, 100 Stat. 3373, provided that:

"(1) The Comptroller General of the United States, upon consultation with the Attorney General and the Secretary of Health and Human Services as well as private sector representatives (including representatives of the financial, banking, and manufacturing industries), shall inquire into technological alternatives for producing and issuing social security account number cards that are more resistant to counterfeiting than social security account number cards being issued on the date of enactment of this Act [Nov. 6, 1986] by the Social Security Administration, including the use of encoded magnetic, optical, or active electronic media such as magnetic stripes, holograms, and integrated circuit chips. Such inquiry should focus on technologies that will help ensure the authenticity of the card, rather than the identity of the bearer.

"(2) The Comptroller General of the United States shall explore additional actions that could be taken to reduce the potential for fraudulently obtaining and using social security account number cards.

"(3) Not later than one year after the date of enactment of this Act [Nov. 6, 1986], the Comptroller General of the United States shall prepare and transmit to the Committee on the Judiciary and the Committee on Ways and Means of the House of Representatives and the Committee on the Judiciary and the Committee on Finance of the Senate a report setting forth his findings and recommendations under this subsection."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 402, 406, 408, 415, 416, 421, 423, 424a, 602, 1320a-7, 1320c-4, 1320c-5, 1383, 1395y, 1395ff, 1395ii, 1395mm, 1395oo, 1396i, 1396q of this title; title 5 section 8503; title 8 section 1324a; title 19 section 2312; title 26 sections 1402, 6109; title 30 section 923.

§ 405a. Regulations pertaining to frequency or due dates of payments and reports under voluntary agreements covering State and local employees; effective date

REFERENCES IN TEXT

Subsec. (e) of section 418 of this title, referred to in text, which related to payments and reports by States, was repealed, and subsec. (f) of section 418 of this title

was redesignated as subsec. (e), by Pub. L. 99-509, title IX, § 9002(c)(1), Oct. 21, 1986, 100 Stat. 1971.

§ 406. Representation of claimants before the Secretary

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395ff, 1395ll of this title; title 30 section 923.

§ 407. Assignment; amendment of section

(a) The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

(b) No other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

(As amended Apr. 20, 1983, Pub. L. 98-21, title III, § 335(a), 97 Stat. 130.)

CODIFICATION

In subsec. (b), "April 20, 1983" was substituted for "the date of the enactment of this section", which was translated as meaning the date of enactment of this subsection, as the probable intent of Congress.

AMENDMENTS

1983—Pub. L. 98-21 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 335(c) of Pub. L. 98-21 provided that: "The amendments made by subsection (a) [amending this section] shall apply only with respect to benefits payable or rights existing under the Social Security Act [this chapter] on or after the date of the enactment of this Act [Apr. 20, 1983]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 659, 1383 of this title; title 26 sections 86, 871, 6334; title 30 section 923.

§ 408. Penalties

Whoever—

(a) for the purpose of causing an increase in any payment authorized to be made under this subchapter, or for the purpose of causing any payment to be made where no payment is authorized under this subchapter, shall make or cause to be made any false statement or representation (including any false statement or representation in connection with any matter arising under subchapter E of chapter 1, or subchapter A or E of chapter 9 of the Internal Revenue Code of 1939, or chapter 2 or 21 or subtitle F of the Internal Revenue Code of 1986) as to—

[*See main edition for text of (1) to (3); (b)*]

shall be guilty of a felony and upon conviction thereof shall be fined not more than $5,000 or imprisoned for not more than five years, or both.

Any person or other entity who is convicted of a violation of any of the provisions of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 405(j) of this title on behalf of another individual (other than such person's spouse), upon his second or any subsequent such conviction shall, in lieu of the penalty set forth in the preceding provisions of this section, be guilty of a felony and shall be fined not more than $25,000 or imprisoned for not more than five years, or both. In the case of any violation described in the preceding sentence, including a first such violation, if the court determines that such violation includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

Any individual or entity convicted of a felony under this section or under section 1383a(b) of this title may not be certified as a payee under section 405(j) of this title.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(a)(5), 98 Stat. 1162; Oct. 9, 1984, Pub. L. 98-460, § 16(c)(2), 98 Stat. 1811; Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095.)

REFERENCES IN TEXT

Subchapter E of chapter 1 and subchapters A and E of chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (a), were comprised of sections 480 to 482, 1400-1432, and 1630-1636, respectively, and were repealed (subject to certain exceptions) by section 7851(a)(1)(A), (3) of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1986 Code, see section 7852(b) of the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

Chapters 2 and 21 and subtitle F of the Internal Revenue Code of 1986, referred to in subsec. (a), are classified to sections 1401 et seq., 3101 et seq., and 6001 et seq., respectively, of Title 26.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" in introductory text.

1984—Pub. L. 98-460 inserted provisions imposing a penalty of $25,000 or imprisonment for not more than five years, or both, on any person or other entity convicted for a second or subsequent violation of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 405(j) of this title, and also granting the court discretion, in any case, including a first offense, involving a willful misuse of funds, to require full or partial restitution, and prohibiting the certification of any individual or entity convicted of a felony under this section or under section 1383a(b) of this title.

Subsecs. (f) to (h). Pub. L. 98-369 realigned margins of subsecs. (f) to (h).

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-460 effective Oct. 9, 1984, and applicable with respect to violations occurring on

or after such date, see section 16(d) of Pub. L. 98-460, set out as a note under section 405 of this title.

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1383a of this title; title 30 section 923.

§ 409. "Wages" defined

For the purposes of this subchapter, the term "wages" means remuneration paid prior to 1951 which was wages for the purposes of this subchapter under the law applicable to the payment of such remuneration, and remuneration paid after 1950 for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that, in the case of remuneration paid after 1950, such term shall not include—

[*See main edition for text of* (a)]

(b) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of (1) sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this clause shall exclude from the term "wages" only payments which are received under a workmen's compensation law), or (2) medical or hospitalization expenses in connection with sickness or accident disability, or (3) death;

(c) Repealed. Pub. L. 98-21, title III, § 324(c)(3)(B), Apr. 20, 1983, 97 Stat. 125;

[*See main edition for text of* (d)]

(e) Any payment made to, or on behalf of, an employee or his beneficiary (1) from or to a trust exempt from tax under section 165(a) of the Internal Revenue Code of 1939 at the time of such payment or, in the case of a payment after 1986, under sections 401 and 501(a) of the Internal Revenue Code of 1986, unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or (2) under or to an annuity plan which, at the time of such payment, meets the requirements of section 165(a)(3), (4), (5), and (6) of the Internal Revenue Code of 1939 or, in the case of a payment after 1954 and prior to 1963, the requirements of section 401(a)(3), (4), (5), and (6) of the Internal Revenue Code of 1986, or (3) under or to an annuity plan which, at the time of any such payment after 1962, is a plan described in section 403(a) of the Internal Revenue Code of 1986, or (4) under or to a bond purchase plan which, at the time of any such payment after 1962, is a qualified bond purchase plan described in section 405(a) of the Internal Revenue Code of 1986 (as in effect before July 18, 1984), or (5) under or to an annuity contract described in section 403(b) of the Internal Revenue Code of 1986, other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise), or (6) under or to an exempt governmental deferred compensation plan (as defined in section 3121(v)(3) of such Code), or (7) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this subsection to take into account some portion or all of the increase in the cost of living (as determined by the Secretary of Labor) since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(2)(B)(ii)], or (8) under a simplified employee pension (as defined in section 408(k) of the Internal Revenue Code of 1986) if, at the time of the payment, it is reasonable to believe that the employee will be entitled to a deduction under section 219(b)(2) of such Code for such payment, or (9) under a cafeteria plan (within the meaning of section 125 of the Internal Revenue Code of 1986);

(f) The payment by an employer (without deduction from the remuneration of the employee)—

(1) of the tax imposed upon an employee under section 3101 of the Internal Revenue Code of 1986, or

(2) of any payment required from an employee under a State unemployment compensation law,

with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

[*See main edition for text of* (g) *and* (h)]

(i) Repealed. Pub. L. 98-21, title III, § 324(c)(3)(B), Apr. 20, 1983, 97 Stat. 125;

[*See main edition for text of* (j)]

(k) Remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 of the Internal Revenue Code of 1986;

[*See main edition for text of* (l)]

(m) Any payment or series of payments by an employer to an employee or any of his dependents which is paid—

(1) upon or after the termination of an employee's employment relationship because of (A) death, or (B) retirement for disability, and

[*See main edition for text of* (2)]

other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated;

[*See main edition for text of (n) and (o)*]

(p)(1) Remuneration paid by an organization exempt from income tax under section 501 of the Internal Revenue Code of 1986 in any calendar year to an employee for service rendered in the employ of such organization, if the remuneration paid in such year by the organization to the employee for such service is less than $100;

(2) Any contribution, payment, or service, provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 of the Internal Revenue Code of 1986 (relating to amounts received under qualified group legal services plans);

(q) Any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 or 129 of the Internal Revenue Code of 1986;

(r) The value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119 of the Internal Revenue Code of 1986; or

(s) Any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 117, or 132 of the Internal Revenue Code of 1986.

Nothing in the regulations prescribed for purposes of chapter 24 of the Internal Revenue Code of 1986 (relating to income tax withholding) which provides an exclusion from "wages" as used in such chapter shall be construed to require a similar exclusion from "wages" in the regulations prescribed for purposes of this subchapter.

For purposes of this subchapter, in the case of domestic service described in subsection (g)(2) of this section, any payment of cash remuneration for such service which is more or less than a whole-dollar amount shall, under such conditions and to such extent as may be prescribed by regulations made under this subchapter, be computed to the nearest dollar. For the purpose of the computation to the nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to $1. The amount of any payment of cash remuneration so computed to the nearest dollar shall, in lieu of the amount actually paid, be deemed to constitute the amount of cash remuneration for purposes of subsection (g)(2) of this section.

For purposes of this subchapter, in the case of an individual performing service, as a member of a uniformed service, to which the provisions of section 410(*l*)(1) of this title are applicable, the term "wages" shall, subject to the provisions of subsection (a) of this section, include as such individual's remuneration for such service only his basic pay as described in chapter 3 and section 1009 of title 37.

For purposes of this subchapter, in the case of an individual performing service, as a volunteer or volunteer leader within the meaning of the Peace Corps Act [22 U.S.C. 2501 et seq.], to which the provisions of section 410(*o*) of this title are applicable, (1) the term "wages" shall, subject to the provisions of subsection (a) of this section, include as such individual's remuneration for such service only amounts certified as payable pursuant to section 5(c) or 6(I) of the Peace Corps Act [22 U.S.C. 2504(c) or 2505(1)], and (2) any such amount shall be deemed to have been paid to such individual at the time the service, with respect to which it is paid, is performed.

For purposes of this subchapter, tips received by an employee in the course of his employment shall be considered remuneration for employment. Such remuneration shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) of the Internal Revenue Code of 1986 or (if no statement including such tips is so furnished) at the time received.

For purposes of this subchapter, in any case where an individual is a member of a religious order (as defined in section 3121(r)(2) of the Internal Revenue Code of 1986) performing service in the exercise of duties required by such order, and an election of coverage under section 3121(r) of such Code is in effect with respect to such order or with respect to the autonomous subdivision thereof to which such member belongs, the term "wages" shall, subject to the provisions of subsection (a) of this section, include as such individual's remuneration for such service the fair market value of any board, lodging, clothing, and other perquisites furnished to such member by such order or subdivision thereof or by any other person or organization pursuant to an agreement with such order or subdivision, except that the amount included as such individual's remuneration under this paragraph shall not be less than $100 a month.

For purposes of this subchapter, in the case of an individual performing service under the provisions of section 294 of title 28 (relating to assignment of retired justices and judges to active duty), the term "wages" shall not include any payment under section 371(b) of such title 28 which is received during the period of such service.

Nothing in any of the foregoing provisions of this section (other than subsection (a) of this section) shall exclude from the term "wages"—

(1) Any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k) of the Internal Revenue Code of 1986) to the extent not included in gross income by reason of section 402(a)(8) of such Code, or

(2) Any amount which is treated as an employer contribution under section 414(h)(2) of such Code where the pickup referred to in

such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise).

Any amount deferred under a nonqualified deferred compensation plan (within the meaning of section 3121(v)(2)(C) of the Internal Revenue Code of 1986) shall be taken into account for purposes of this subchapter as of the later of when the services are performed, or when there is no substantial risk of forfeiture of the rights to such amount. Any amount taken into account as wages by reason of the preceding sentence (and the income attributable thereto) shall not thereafter be treated as wages for purposes of this subchapter.

(As amended Apr. 20, 1983, Pub. L. 98-21, title I, § 101(c)(1), title III, §§ 324(c)(1)-(3), 327(a)(2), (b)(2), 328(b), 97 Stat. 70, 124, 125, 127, 128; July 18, 1984, Pub. L. 98-369, div. A, title IV, § 491(d)(39), title V, § 531(d)(1)(B), div. B, title VI, §§ 2661(i), 2663(a)(6), 98 Stat. 851, 884, 1157, 1162; Apr. 7, 1986, Pub. L. 99-272, title XII, § 12112(a), 100 Stat. 288; Oct. 22, 1986, Pub. L. 99-514, § 2, title I, § 122(e)(5), title XI, § 1151(d)(2)(C), 100 Stat. 2095, 2112, 2505.)

REFERENCES IN TEXT

Section 165 of the Internal Revenue Code of 1939, referred te in subsec. (e), was a part of chapter 1 of the 1939 Code, and was repealed by section 7851(a)(1)(A), (3) of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095.

Section 405(a) of the Internal Revenue Code of 1986, referred to in subsec. (e), was repealed by Pub. L. 98-369, div. A, title IV, § 491(a), July 18, 1984, 98 Stat. 848.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1986 Code, see section 7852(b) of the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

The Internal Revenue Code of 1986, referred to in text, is classified to Title 26, Internal Revenue Code.

AMENDMENTS

1986—Subsec. (e). Pub. L. 99-514, § 1151(d)(2)(C), added cl. (9).

Pub. L. 99-514, § 2, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsecs. (f)(1), (k), (p), (q). Pub. L. 99-514, § 2, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" wherever appearing.

Subsec. (s). Pub. L. 99-514, § 122(e)(5), substituted "74(c), 117, or" for "117 or".

Pub. L. 99-514, § 2, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Pub. L. 99-514, § 2, in concluding undesignated paragraphs substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", wherever appearing.

Pub. L. 99-272 in third to last undesignated paragraph, substituted "shall not include" for "shall, subject to the provisions of subsection (a) of this section, include".

1984—Pub. L. 98-369, § 531(d)(1)(B)(i), inserted in introductory text "(including benefits)" before "paid in any medium".

Subsec. (a)(5) to (9). Pub. L. 98-369, § 2663(a)(6)(A)(i), realigned margins of pars. (5) to (9).

Subsec. (e). Pub. L. 98-369, § 2663(a)(6)(A)(v), realigned margin of subsec. (e).

Subsec. (e)(4). Pub. L. 98-369, § 491(d)(39), inserted "(as in effect before July 18, 1984)" after "section 405(a) of the Internal Revenue Code of 1954".

Subsec. (e)(7). Pub. L. 98-369, § 2661(i)(1), struck out the semicolon after "Act of 1974".

Subsecs. (f), (k) to (p). Pub. L. 98-369, § 2663(a)(6)(A)(v), realigned margins of subsecs. (f) and (k) to (p).

Subsec. (p). Pub. L. 98-369, § 2663(a)(6)(A)(ii)-(iv), redesignated the subsec. (p) enacted by Pub. L. 95-216 as par. (1) and the subsec. (p) enacted by Pub. L. 95-472 as par. (2), and substituted a semicolon for a period in par. (1) as so redesignated.

Subsecs. (q), (r). Pub. L. 98-369, § 2663(a)(6)(A)(v), realigned margins of subsecs. (q) and (r).

Subsec. (s). Pub. L. 98-369, § 531(d)(1)(B)(ii), added subsec. (s).

Pub. L. 98-369, § 2663(a)(6)(B), in undesignated par. relating to the meaning of "wages" in the case of a member of a uniformed service to which section 410(*l*)(1) of this title is applicable, substituted "chapter 3 and section 1009 of title 37" for "section 102(10) of the Servicemen's and Veterans' Survivor Benefits Act".

Pub. L. 98-369, § 2661(i)(2), in undesignated par. relating to employer contributions as not being excluded from "wages", inserted "where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise)".

1983—Subsec. (b). Pub. L. 98-21, § 324(c)(3)(A), struck out cl. (1) which read "retirement", and redesignated cls. (2) to (4) as (1) to (3), respectively.

Subsec. (c). Pub. L. 98-21, § 324(c)(3)(B), struck out subsec. (c) which related to any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement.

Subsec. (e)(5) to (7). Pub. L. 98-21, § 324(c)(2), added cls. (5) to (7).

Subsec. (e)(8). Pub. L. 98-21, § 328(b), added cl. (8).

Subsec. (i). Pub. L. 98-21, § 324(c)(3)(B), struck out subsec. (i) which related to any payment (other than vacation or sick pay) made to an employee after the month in which he attained age 62, if he did not work for the employer in the period for which such payment was made, and provided for this subsection that "sick pay" included remuneration for service in the employ of a State, a political subdivision (as defined in section 418(b)(2) of this title) of a State, or an instrumentality of two or more States, paid to an employee thereof for a period during which he was absent from work because of sickness.

Subsec. (m)(1)(C). Pub. L. 98-21, § 324(c)(3)(C), struck out subpar. (C) which related to retirement after attaining an age specified in the plan referred to in par. (2) or in a pension plan of the employer.

Subsec. (r). Pub. L. 98-21, § 327(a)(2), added subsec. (r).

Pub. L. 98-21, § 327(b)(2), inserted, immediately following subsec. (r), provision that nothing in the regulations prescribed for purposes of chapter 24 of the Internal Revenue Code of 1954 (relating to income tax withholding) which provides an exclusion from "wages" as used in such chapter shall be construed to require a similar exclusion from "wages" in the regulations prescribed for purposes of this subchapter.

Pub. L. 98-21, § 324(c)(1), inserted, at end of section, two undesignated pars. specifying the inclusion of certain employer contributions as "wages" and directing that any amount deferred under a nonqualified deferred compensation plan be taken into account under certain conditions but not treated as wages thereafter for purposes of this subchapter.

Pub. L. 98-21, § 101(c)(1), inserted, at end of section, undesignated par. defining "wages" for purposes of this subchapter in the case of an individual performing service under provisions of section 294 of title 28 (relating to assignment of retired justices and judges

to active duty) to include payments under section 371(b) of title 28 that is received during the period of such service.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 122(e)(5) of Pub. L. 99-514 applicable to prizes and awards granted after Dec. 31, 1988, see section 151(c) of Pub. L. 99-514, set out as a note under section 1 of Title 26, Internal Revenue Code.

Amendment by section 1151(d)(2)(C) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1983, see section 1151(k)(5) of Pub. L. 99-514, set out as a note under section 89 of Title 26.

Section 12112(c) of Pub. L. 99-272 provided that: "The amendments made by this section [amending this section and section 3121 of Title 26, Internal Revenue Code] shall be effective with respect to service performed after December 31, 1983."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(39) of Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 62 of Title 26, Internal Revenue Code.

Amendment by section 531(d)(1)(B) of Pub. L. 98-369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98-369, set out as an Effective Date note under section 132 of Title 26.

Amendment by section 2661 of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2664(a) of Pub. L. 98-369, set out as a note under section 401 of this title.

Amendment by section 2863 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 101(c)(1) of Pub. L. 98-21 effective with respect to services performed after Dec. 31, 1983, see section 101(d) of Pub. L. 98-21, as amended, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by section 324 of Pub. L. 98-21 applicable to remuneration paid after Dec. 31, 1983, except for certain employer contributions made during 1984 under a qualified cash or deferred arrangement, and except in the case of an agreement with certain nonqualified deferred compensation plans in existence on Mar. 24, 1983, see section 324(d) of Pub. L. 98-21, set out as a note under section 3121 of Title 26.

Amendment by section 327(a)(2) of Pub. L. 98-21 applicable to remuneration paid after Dec. 31, 1983, see section 327(d)(1) of Pub. L. 98-21, as amended, set out as a note under section 3121 of Title 26.

Amendment by section 327(b)(2) of Pub. L. 98-21 applicable to remuneration (other than amounts excluded under 28 U.S.C. 119) paid after Mar. 4, 1983, and to any such remuneration paid on or before such date which the employer treated as wages when paid, see section 327(d)(2) of Pub. L. 98-21, as amended, set out as a note under section 3121 of Title 26.

Amendment by section 328 of Pub. L. 98-21 applicable to remuneration paid after Dec. 31, 1983, see section 328(d)(1) of Pub. L. 98-21, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1981 AMENDMENTS

Amendment by Pub. L. 97-34 applicable to remuneration paid after Dec. 31, 1981, see section 124(f) of Pub. L. 97-34, set out as a note under section 21 of Title 26, Internal Revenue Code.

SOCIAL SECURITY COVERAGE OF RETIRED FEDERAL JUDGES ON ACTIVE DUTY

Notwithstanding section 101(d) of Pub. L. 98-21, set out as an Effective Date of 1983 Amendment note above, the amendment of this section by section 101(c)(1) of Pub. L. 98-21 is applicable only with respect to remuneration paid after Dec. 31, 1985, with remuneration paid prior to Jan. 1, 1986, under section 371(b) of Title 28, Judiciary and Judicial Procedure, to an individual performing service under section 294 of Title 28 not to be included in the term "wages" for purposes of this section or section 3121(a) of Title 26, Internal Revenue Code, see section 4 of Pub. L. 98-118, set out as a note under section 3121 of Title 26.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 403, 405, 413, 415, 417, 418, 424a, 430 of this title; title 5 sections 5901, 8440; title 26 section 7701; title 29 section 206; title 45 sections 231, 231b, 231e.

§ 410. Definitions relating to employment

For the purposes of this subchapter—

(a) Employment

The term "employment" means any service performed after 1936 and prior to 1951 which was employment for the purposes of this subchapter under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1950 (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen or resident of the United States as an employee (i) of an American employer (as defined in subsection (e) of this section), or (ii) of a foreign affiliate (as defined in section 3121(*l*)(8) of the Internal Revenue Code of 1986) of an American employer during any period for which there is in effect an agreement, entered into pursuant to section 3121(*l*) of such Code, with respect to such affiliate, or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 433 of this title; except that, in the case of service performed after 1950, such term shall not include—

(1) Service performed by foreign agricultural workers lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West Indies, or from any other foreign country or possession thereof, on a temporary basis to perform agricultural labor;

[*See main edition for text of* (2) *to* (4)]

(5) Service performed in the employ of the United States or any instrumentality of the United States, if such service—

(A) would be excluded from the term "employment" for purposes of this subchapter if the provisions of paragraphs (5) and (6) of this subsection as in effect in January 1983 had remained in effect, and

(B) is performed by an individual who—

(i) has been continuously performing service described in subparagraph (A) since December 31, 1983, and for purposes of this clause—

(I) if an individual performing service described in subparagraph (A) returns to the performance of such service after being separated therefrom for a period of less than 366 consecutive days, regardless of whether the period began before, on, or after December 31, 1983, then such service shall be considered continuous,

(II) if an individual performing service described in subparagraph (A) returns to the performance of such service after being detailed or transferred to an international organization as described under section 3343 of subchapter III of chapter 33 of title 5 or under section 3581 of chapter 35 of such title, then the service performed for that organization shall be considered service described in subparagraph (A),

(III) if an individual performing service described in subparagraph (A) is reemployed or reinstated after being separated from such service for the purpose of accepting employment with the American Institute of Taiwan as provided under section 3310 of title 22, then the service performed for that Institute shall be considered service described in subparagraph (A),

(IV) if an individual performing service described in subparagraph (A) returns to the performance of such service after performing service as a member of a uniformed service (including, for purposes of this clause, service in the National Guard and temporary service in the Coast Guard Reserve) and after exercising restoration or reemployment rights as provided under chapter 43 of title 38, then the service so performed as a member of a uniformed service shall be considered service described in subparagraph (A), and

(V) if an individual performing service described in subparagraph (A) returns to the performance of such service after employment (by a tribal organization) to which section 450i(a)(2) of title 25 applies, then the service performed for that tribal organization shall be considered service described in subparagraph (A); or

(ii) is receiving an annuity from the Civil Service Retirement and Disability Fund, or benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services);

except that this paragraph shall not apply with respect to—

(C) service performed as the President or Vice President of the United States,

(D) service performed—

(i) in a position placed in the Executive Schedule under sections 5312 through 5317 of title 5,

(ii) as a noncareer appointee in the Senior Executive Service or a noncareer member of the Senior Foreign Service, or

(iii) in a position to which the individual is appointed by the President (or his designee) or the Vice President under section 105(a)(1), 106(a)(1), or 107(a)(1) or (b)(1) of title 3, if the maximum rate of basic pay for such position is at or above the rate for level V of the Executive Schedule,

(E) service performed as the Chief Justice of the United States, an Associate Justice of the Supreme Court, a judge of a United States court of appeals, a judge of a United States district court (including the district court of a territory), a judge of the United States Claims Court, a judge of the United States Court of International Trade, a judge of the United States Tax Court, a United States magistrate, or a referee in bankruptcy or United States bankruptcy judge,

(F) service performed as a Member, Delegate, or Resident Commissioner of or to the Congress,

(G) any other service in the legislative branch of the Federal Government if such service—

(i) is performed by an individual who was not subject to subchapter III of chapter 83 of title 5 or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), on December 31, 1983, or

(ii) is performed by an individual who has, at any time after December 31, 1983, received a lump-sum payment under section 8342(a) of title 5 or under the corresponding provision of the law establishing the other retirement system described in clause (i), or

(iii) is performed by an individual after such individual has otherwise ceased to be subject to subchapter III of chapter 83 of title 5, (without having an application pending for coverage under such subchapter), while performing service in the legislative branch (determined without regard to the provisions of subparagraph (B) relating to continuity of employment), for any period of time after December 31, 1983,

and for purposes of this subparagraph (G) an individual is subject to such subchapter III or to any such other retirement system at any time only if (a) such individual's pay is subject to deductions, contributions, or similar payments (concurrent with the service being performed at that time) under sec-

tion 8334(a) of such title 5 or the corresponding provision of the law establishing such other system, or (in a case to which section 8332(k)(1) of such title applies) such individual is making payments of amounts equivalent to such deductions, contributions, or similar payments while on leave without pay, or (h) such individual is receiving an annuity from the Civil Service Retirement and Disability Fund, or is receiving benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), or

(H) service performed by an individual on or after the effective date of an election by such individual under section 301(a) of the Federal Employees' Retirement System Act of 1986, or under regulations issued under section 860 of the Foreign Service Act of 1980 [22 U.S.C. 4071i] or section 307 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, to become subject to chapter 84 of title 5;

(6) Service performed in the employ of the United States or any instrumentality of the United States if such service is performed—

(A) in a penal institution of the United States by an inmate thereof;

(B) by any individual as an employee included under section 5351(2) of title 5 (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government), other than as a medical or dental intern or a medical or dental resident in training; or

(C) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency;

[*See main edition for text of* (7)]

(8)(A) Service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required hy such order, except that this subparagraph shall not apply to service performed by a member of such an order in the exercise of such duties, if an election of coverage under section 3121(r) of the Internal Revenue Code of 1986 is in effect with respect to such order, or with respect to the autonomous subdivision thereof to which such member belongs;

(B) Service performed in the employ of a church or qualified church-controlled organization if such church or organization has in effect an election under section 3121(w) of the Internal Revenue Code of 1986, other than service in an unrelated trade or business (within the meaning of section 513(a) of such Code);

(9) Service performed by an individual as an employee or employee representative as defined in section 3231 of the Internal Revenue Code of 1986;

(10) Service performed in the employ of—

(A) a school, college, or university, or

(B) an organization described in section 509(a)(3) of the Internal Revenue Code of 1986 if the organization is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university and is operated, supervised, or controlled by or in connection with such school, college, or university, unless it is a school, college, or university of a State or a political subdivision thereof and the services in its employ performed by a student referred to in section 418(c)(5) of this title are covered under the agreement between the Secretary and such State entered into pursuant to section 418 of this title;

if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university;

[*See main edition for text of* (11) *to* (18)]

(19) Service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 1101(a)(15) of title 8, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be; or

[*See main edition for text of* (20); (b) *to* (k)]

(l) Service in the uniformed services

[*See main edition for text of* (1)]

(2) The term "active duty" means "active duty" as described in paragraph (21) of section 101 of title 38, except that it shall also include "active duty for training" as described in paragraph (22) of such section.

(3) The term "inactive duty training" means "inactive duty training" as described in paragraph (23) of such section 101.

(4)(A) Paragraph (1) of this subsection shall not apply in the case of any service, performed by an individual as a member of a uniformed service, which is creditable under section 231b(i) of title 45. The Railroad Retirement Board shall notify the Secretary with respect to all such service which is so creditable.

[*See main edition for text of* (B)]

(m) Member of a uniformed service

The term "member of a uniformed service" means any person appointed, enlisted, or inducted in a component of the Army, Navy, Air Force, Marine Corps, or Coast Guard (including a reserve component as defined in section 101(27) of title 38), or in one of those services without specification of component, or as a commissioned officer of the Coast and Geodetic Survey, the National Oceanic and Atmospheric Administration Corps, or the Regular or Reserve Corps of the Public Health Service, and any person serving in the Army or Air Force under call or conscription. The term includes—

[*See main edition for text of* (1) *to* (4)]

(5) any person while en route to or from, or at, a place for final acceptance or for entry upon active duty in the military, naval, or air service—

(A) who has been provisionally accepted for such duty; or

(B) who, under the Military Selective Service Act [50 App. U.S.C. 451 et seq.], has been selected for active military, naval, or air service;

and has been ordered or directed to proceed to such place.

The term does not include a temporary member of the Coast Guard Reserve.

[*See main edition for text of* (n) *and* (o)]

(p) Medicare qualified government employment

(1) For purposes of sections 426 and 426-1 of this title, the term "medicare qualified government employment" means any service which would constitute "employment" as defined in subsection (a) of this section but for the application of the provisions of—

(A) subsection (a)(5) of this section, or

(B) subsection (a)(7) of this section, except as provided in paragraphs (2) and (3).

(2) Service shall not be treated as employment by reason of paragraph (1)(B) if the service is performed—

(A) by an individual who is employed by a State or political subdivision thereof to relieve him from unemployment,

(B) in a hospital, home, or other institution by a patient or inmate thereof as an employee of a State or political subdivision thereof or of the District of Columbia,

(C) by an individual, as an employee of a State or political subdivision thereof or of the District of Colnmbia, serving on a temporary basis in case of fire, storm, snow, earthquake, flood or other similar emergency,

(D) by any individual as an employee included under section 5351(2) of title 5 (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or a medical or dental resident in training, or

(E) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $100.

As used in this paragraph, the terms "State" and "political subdivision" have the meanings given those terms in section 418(b) of this title.

(3) Service performed for an employer shall not be treated as employment by reason of paragraph (1)(B) if—

(A) such service would be excluded from the term "employment" for purposes of this section if paragraph (1)(B) did not apply;

(B) such service is performed by an individual—

(i) who was performing substantial and regular service for remuneration for that employer before April 1, 1986,

(ii) who is a bona fide employee of that employer on March 31, 1986, and

(iii) whose employment relationship with that employer was not entered into for purposes of meeting the requirements of this subparagraph; and

(C) the employment relationship with that employer has not been terminated after March 31, 1986.

(4) For purposes of paragraph (3), under regulations (consistent with regulations established under section 3121(u)(2)(D) of the Internal Revenue Code of 1986)—

(A) all agencies and instrumentalities of a State (as defined in section 418(b) of this title) or of the District of Columbia shall be treated as a single employer, and

(B) all agencies and instrumentalities of a political subdivision of a State (as so defined) shall be treated as a single employer and shall not be treated as described in subparagraph (A).

(q) Treatment of real estate agents and direct sellers

Notwithstanding any other provision of this subchapter, the rules of section 3508 of the Internal Revenue Code of 1986 shall apply for purposes of this subchapter.

(Aug. 14, 1935, ch. 531, title II, § 210, as added Aug. 10, 1046, ch. 951, title II, § 201, 60 Stat. 979, and amended, Aug. 28, 1950, ch. 809, title I, § 104(a), 64 Stat. 492, 494; Oct. 31, 1940, ch. 792, title V, § 506(a), formerly § 505(a), as added July 12, 1951, ch. 223, 65 Stat. 120, and renumbered Oct. 3, 1961, Pub. L. 87-345, § 3, 75 Stat. 761; Sept. I, 1954, ch. 1206, title I, § 101(a)(4), (5), (b), (c)(1), (2), (e), (f), (m), 68 Stat. 1052, 1061; Aug. 1, 1956, ch. 836, title I, §§ 104(a), (b), (c)(1), 105(b), 121(c), 70 Stat. 824, 828, 839; Aug. 1, 1956, ch. 837, title IV, § 402(a), 70 Stat. 870; Aug. 28, 1958, Pub. L. 85-840, title III, § 311(a), 312(a), 72 Stat. 1035; June 25, 1959, Pub. L. 86-70, § 32(c)(2), 73 Stat. 149; Aug. 18, 1959, Pub. L. 86-168, title I, § 104(h), title II, § 202(a), 73 Stat. 387, 389; July 12, 1960, Pub. L. 86-624, § 30(c)(2), 74 Stat. 420; Sept. 13, 1960, Pub. L. 86-778, title I, §§ 103(c)-(f), (j)(2)(A), (B), 104(a), 74 Stat. 936, 937, 942; Sept. 21, 1961, Pub. L. 87-256, § 110(e)(2), 75 Stat. 537; Sept. 22, 1961, Pub. L. 87-293, title II, § 202(b)(1), 75 Stat. 626; July 30, 1965, Pub. L. 89-97, title III, §§ 311(a)(3), (4), 317(a), 79 Stat. 380, 381, 388; Jan. 2, 1968, Pub. L. 90-248, title I, § 123(a), title IV, § 403(a), 81 Stat. 844, 931; Oct. 30, 1972, Pub. L. 92-603, title I, §§ 123(a)(1), 128(a), 129(a)(1), 86 Stat. 1354, 1358, 1359; Oct. 16, 1974, Pub. L. 93-445, title III, § 311, 88 Stat. 1359; Oct. 4, 1976, Pub. L. 94-455, title XII, § 1207(e)(2)(A), 90 Stat. 1707; Oct. 19, 1976, Pub. L. 94-563, § 1(a), 90 Stat. 2655; Dec. 20, 1977, Pub. L. 95-216, title III, § 351(a)(1), (3)(B), 91 Stat. 1549; Nov. 6, 1978, Pub. L. 95-600, title VII, § 703(j)(14)(C), 92 Stat. 2942; Sept. 3, 1982, Pub. L. 97-248, title II, §§ 269(b), 278(b)(1), 96 Stat. 552, 560; Jan. 12, 1983, Pub. L. 97-448, title III, § 309(b)(23), 96 Stat. 2410; Apr. 20, 1983, Pub. L. 98-21, title I, §§ 101(a), 102(a), title III, §§ 321(b), 322(a)(1), 323(a)(2), 97 Stat. 67, 70, 118, 120, 121; July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2601(a), 2603(a)(1), 2661(j), 2663(a)(7), (j)(3)(A)(i), 98 Stat. 1122, 1128, 1157, 1162, 1170; Dec. 26, 1985, Pub. L. 99-221, § 3(b), 99 Stat. 1735; Apr. 7, 1986, Pub. L. 99-272, title

XIII, § 13205(b)(1), 100 Stat. 316; June 6, 1986, Pub. L. 99-335, title III, § 304(a), 100 Stat. 606; Oct. 22, 1986, Pub. L. 99-514, § 2, title XVIII, §§ 1883(a)(4), 1895(b)(18)(B), (19), 100 Stat. 2095, 2916, 2935.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in text, is classified to Title 26, Internal Revenue Code.

The Civil Service Retirement and Disability Fund, referred to in subsec. (a)(5)(B)(ii), (G), is provided for in section 8348 of Title 5, Government Organization and Employees.

Section 301(a) of the Federal Employees' Retirement System Act of 1986, referred to in subsec. (a)(5)(H), is section 301(a) of Pub. L. 99-335, which is set out as a note under section 8331 of Title 5.

Section 307 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, referred to in subsec. (a)(5)(H), is section 307 of Pub. L. 88-643, which is set out as a note under section 403 of Title 50, War and National Defense.

The Military Selective Service Act, referred to in subsec. (m)(5)(B), is act June 24, 1946, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of Title 50 Appendix, War and National Defense. For complete classification of this Act to the Code, see References in Text note set out under section 451 of Title 50 Appendix and Tables.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-514, § 2, in introductory provisions, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (a)(5)(G). Pub. L. 99-514, § 1883(a)(4), substituted "any other service" for "Any other service".

Subsec. (a)(5)(H). Pub. L. 99-335 added subpar. (H).

Subsec. (a)(8), (9), (10)(B). Pub. L. 99-514, § 2, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", wherever appearing.

Subsec. (p). Pub. L. 99-272 amended subsec. (p) generally. Prior to amendment, subsec. (p) read as follows: "For purposes of sections 426 and 426-1 of this title, the term 'medicare qualified Federal employment' means any service which would constitute 'employment' as defined in subsection (a) of this section but for the application of the provisions of subsection (a)(5) of this section."

Subsec. (p)(2)(E). Pub. L. 99-514, § 1895(b)(18)(B), added subpar. (E).

Subsec. (p)(4). Pub. L. 99-514, § 2, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (p)(4)(B). Pub. L. 99-514, § 1895(b)(19), struck out quotation marks before "(A)".

Subsec. (q). Pub. L. 99-514, § 2, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1985—Subsec. (a)(5)(B)(i)(V). Pub. L. 99-221 added subcl. (V).

1984—Subsec. (a). Pub. L. 98-369, § 2661(j), struck out the second comma after "such affiliate".

Subsec. (a)(1). Pub. L. 98-369, § 2663(a)(7)(A), struck out "(A) under contracts entered into in accordance with title V of the Agricultural Act of 1949, as amended, or (B)".

Subsec. (a)(5)(B). Pub. L. 98-369, § 2601(a)(1), in amending subpar. (B) generally, substituted "(i) has been continuously performing service described in subparagraph (A) since December 31, 1983, and for purposes of this clause—(I) if an individual performing service described in subparagraph (A) returns to the performance of such service after being separated therefrom for a period of less than 366 consecutive days, regardless of whether the period began before, on, or after December 31, 1983, then such service shall be considered continuous," for "(i) has been continuously in the employ of the United States or an instrumentality thereof since December 31, 1983 (and for this purpose an individual who returns to the performance of such service after being separated therefrom following a previous period of such service shall nevertheless be considered upon such return as having been continuously in the employ of the United States or an instrumentality thereof, regardless of whether the period of such separation began before, on, or after December 31, 1983, if the period of such separation does not exceed 365 consecutive days),", added subcls. (II) to (IV), and reenacted cl. (ii).

Subsec. (a)(5)(C) to (F). Pub. L. 98-369, § 2601(a)(2)(A), (B), in provisions following "except that this paragraph shall not apply with respect to—" redesignated cls. (i), (ii), (iii), and (iv) as subpars. (C), (D), (E), and (F), respectively, and redesignated former subcls. (I), (II), and (III) as cls. (i), (ii), and (iii), respectively, of the redesignated subpar. (D).

Subsec. (a)(5)(G). Pub. L. 98-369, § 2601(a)(2)(A), (C), in provisions following "except that this paragraph shall not apply with respect to—" redesignated former cl. (v) as subpar. (G), and in subpar. (G) as so redesignated, designated the existing provisions of subpar. (G) as the introductory language and the first phrase of cl. (i) and added the remainder of cl. (i) following "chapter 38 of title 5", cls. (ii) and (iii), and the provisions following cl. (iii).

Subsec. (a)(7)(D). Pub. L. 98-369, § 2663(a)(7)(B), realigned margins of subpar. (D).

Subsec. (a)(8). Pub. L. 98-369, § 2603(a)(1), desiguated existing provisions as subpar. (A), in subpar. (A) as so designated substituted "this subparagraph" for "this paragraph", and added subpar. (B).

Subsec. (a)(9). Pub. L. 98-369, § 2663(a)(7)(C), substituted "section 3231 of the Internal Revenue Code of 1954" for "section 1532 of the Internal Revenue Code of 1939".

Subsec. (a)(10)(B). Pub. L. 98-369, § 2663(j)(3)(A)(i), struck out "of Health, Education, and Welfare" after "Secretary".

Subsec. (a)(19). Pub. L. 98-369, § 2663(a)(7)(D), struck out the comma after "; or".

Subsec. (*l*)(2). Pub. L. 98-369, § 2663(a)(7)(E), substituted "paragraph (21) of section 101 of title 38" for "section 102 of the Servicemen's and Veterans' Survivor Benefits Act" and "paragraph (22) of such section" for "such section".

Subsec. (*l*)(3). Pub. L. 98-369, § 2663(a)(7)(F), substituted "paragraph (23) of such section 101" for "such section 102".

Subsec. (*l*)(4)(A). Pub. L. 98-369, § 2663(j)(3)(A)(i), struck out "of Health, Education, and Welfare" after "Secretary".

Subsec. (m). Pub. L. 98-369, § 2663(a)(7)(G)(i), (ii), in provisions preceding par. (1), substituted "a reserve component as defined in section 101(27) of title 38" for "a reserve component of a uniformed service as defined in section 102(3) of the Servicemen's and Veterans' Survivor Benefits Act" and inserted reference to the National Oceanic and Atmospheric Administration Corps.

Subsec. (m)(5). Pub. L. 98-369, § 2663(a)(7)(G)(iii), substituted "military, naval, or air" for "military or naval" wherever appearing.

Subsec. (m)(5)(B). Pub. L. 98-369, § 2663(a)(7)(G)(iv), substituted "Military Selective Service Act" for "Universal Military Training and Service Act".

1983—Subsec. (a). Pub. L. 98-21, § 322(a)(1), added cl. (C) and struck out "either" before "A" in provisions preceding par. (1).

Pub. L. 98-21, § 321(b), amended cl. (B) in provisions preceding par. (1) generally, substituting reference to section 3121(*l*)(8) of the Internal Revenue Code of 1954 for reference to section 3121(*l*) of such Code "an American employer" for "a domestic corporation (as determined in accordance with section 7701 of the Internal Revenue Code of 1954)", and "affiliate" for "subsidiary" after "with respect to such".

Pub. L. 98-21, § 323(a)(2), substituted "a citizen or resident of the United States" for "a citizen of the

United States" in cl. (B) in provisions preceding par. (1).

Subsec. (a)(5). Pub. L. 98-21, § 101(a)(1), amended par. (5) generally. Prior to amendment, par. (5) read as follows: "Service performed in the employ of any instrumentality of the United States, if such instrumentality is exempt from the tax imposed by section 1410 of the Internal Revenue Code of 1939, by virtue of any provision of law which specifically refers to such section in granting such exemption;".

Subsec. (a)(6). Pub. L. 98-21, § 101(a)(1), amended par. (6) generally. Prior to amendment, par. (6) read as follows:

"(A) Service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is covered by a retirement system established by a law of the United States;

"(B) Service performed by an individual in the employ of an instrumentality of the United States if such an instrumentality was exempt from the tax imposed by section 1410 of the Internal Revenue Code of 1939, on December 31, 1950, and if such service is covered by a retirement system established by such instrumentality; except that the provisions of this subparagraph shall not be applicable to—

"(i) service performed in the employ of a corporation which is wholly owned by the United States;

"(ii) service performed in the employ of a Federal land bank, a Federal intermediate credit bank, a bank for cooperatives, a Federal land bank association, a production credit association, a Federal Reserve Bank, a Federal Home Loan Bank, or a Federal Credit Union;

"(iii) service performed in the employ of a State, county, or community committee under the Production and Marketing Administration;

"(iv) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; or

"(v) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Transportation, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard;

"(C) Service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is performed—

"(i) as the President or Vice President of the United States or as a Member, Delegate, or Resident Commissioner of or to the Congress;

"(ii) in the legislative branch;

"(iii) in a penal institution of the United States by an inmate thereof;

"(iv) by any individual as an employee included under section 5351(2) of title 5, other than as a medical or dental intern or a medical or dental resident in training;

"(v) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency; or

"(vi) by any individual to whom subchapter III of chapter 83 of title 5 does not apply because such individual is subject to another retirement system (other than the retirement system of the Tennessee Valley Authority);".

Subsec. (a)(8). Pub. L. 98-21, § 102(a), struck out subpar. (A) designation, struck out subpar. (B) which had related to service performed by employees of nonprofit organizations, and substituted "this paragraph" for "this subparagraph".

Subsec. (p). Pub. L. 98-21, § 101(a)(2), struck out designations for pars. (1) and (2) and struck out par. (1) which related to application of the provisions of subparagraph (A), (B), or (C)(i), (ii), or (vi) of subsection (a)(6) of this section.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1883(a)(4) of Pub. L. 99-514 effective Oct. 22, 1986, see section 1883(f) of Pub. L. 99-514, set out as a note under section 402 of this title.

Amendment by section 1895(b)(18)(B) of Pub. L. 99-514 applicable to services performed after Mar. 31, 1986, see section 1895(b)(18)(C) of Pub. L. 99-514, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by section 1895(b)(19) of 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.

Section 13205(d)(2) of Pub. L. 99-272 provided that:

"(A) IN GENERAL.—The amendments made by subsection (b) [amending sections 410, 426, 426-1, and 1395c of this title] shall be effective after March 31, 1986, and the amendments made by paragraph (3) of that subsection [subsection does not contain a paragraph (3)] shall apply to services performed (for medicare qualified government employment) after that date.

"(B) TREATMENT OF CERTAIN DISABILITIES.—For purposes of establishing entitlement to hospital insurance benefits under part A of title XVIII of the Social Security Act [42 U.S.C. 1395c et seq.] pursuant to the amendments made by subsection (b), no individual may be considered to be under a disability for any period beginning before April 1, 1986."

EFFECTIVE DATE OF 1985 AMENDMENT

Section 3(c) of Pub. L. 99-221 provided that: "The amendments made by subsection (b) [amending section 410 of this title and section 3121 of Title 26, Internal Revenue Code] apply to any return to the performance of service in the employ of the United States, or of an instrumentality thereof, after 1983."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2601(f) of Pub. L. 98-369 provided that: "Except as provided in subsection (d) [set out as a Qualification and Requalification of Federal Employees for Benefits note below], the amendments made by subsections (a) and (b) [amending section 410 of this title and section 3121 of Title 26, Internal Revenue Code] (and provisions of subsection (e) [set out as a Services Performed for Nonprofit Organizations by Federal Employees note below]) shall be effective with respect to service performed after December 31, 1983."

Section 2603(e) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 410 and 411 of this title and sections 1402 and 3121 of Title 26 and enacting provisions set out as a note under section 3121 of Title 26] shall apply to service performed after December 31, 1983."

Amendment by section 2661 of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2664(a) of Pub. L. 98-369, set out as a note under section 401 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 101(a) of Pub. L. 98-21 effective with respect to service performed after Dec. 31, 1983, see section 101(d) of Pub. L. 98-21, as amended, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by section 102(a) of Pub. L. 98-21 effective with respect to service performed after Dec. 31, 1983, see section 102(c) of Pub. L. 98-21, set out as a note under section 3121 of Title 26.

Amendment by section 321 of Pub. L. 98-21 applicable to agreements entered into after Apr. 20, 1983, except that at the election of any American employer such amendment shall also apply to any agreement entered into on or before Apr. 20, 1983, see section 321(f) of Pub. L. 98-21, set out as a note under section 406 of Title 26.

Amendment by section 322 of Pub. L. 98-21, effective in taxable years beginning on or after Apr. 20, 1983, see section 322(c) of Pub. L. 98-21, set out as a note under section 3121 of Title 26.

Amendment by section 323(a)(2) of Pub. L. 98-21 applicable to remuneration paid after Dec. 31, 1983, see section 323(c)(1) of Pub. L. 98-21, set out as a note under 3121 of Title 26.

FEDERAL LEGISLATIVE BRANCH EMPLOYEES WHO CONTRIBUTE REDUCED AMOUNTS BY REASON OF THE FEDERAL EMPLOYEES' RETIREMENT CONTRIBUTION TEMPORARY ADJUSTMENT ACT OF 1983

Section 2601(c) of Pub. L. 98-369, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "For purposes of section 210(a)(5)(G) of the Social Security Act [42 U.S.C. 410(a)(5)(G)] and section 3121(b)(5)(G) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 3121(b)(5)(G)], an individual shall not be considered to be subject to subchapter III of chapter 83 of title 5, United States Code, or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), if he is contributing a reduced amount by reason of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 [Pub. L. 98-168, title II, Nov. 29, 1983, 97 Stat. 1106, set out as a note under section 8331 of Title 5, Government Organization and Employees]."

QUALIFICATION AND REQUALIFICATION OF FEDERAL EMPLOYEES FOR BENEFITS

Section 2601(d) of Pub. L. 98-369, as amended by Pub. L. 99-514, § 2, title XVIII, § 1883(a)(5)(A), Oct. 22, 1986, 100 Stat. 2916, provided that:

"(1) Any individual who—

"(A) was subject to subchapter III of chapter 83 of title 5, United States Code, or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), on December 31, 1983 (as determined for purposes of section 210(a)(5)(G) of the Social Security Act [42 U.S.C. 410(a)(5)(G)]), and

"(B)(i) received a lump-sum payment under section 8342(a) of such title 5, or under the corresponding provision of the law establishing the other retirement system described in subparagraph (A), after December 31, 1983, and prior to June 15, 1984, or received such a payment on or after June 15, 1984, pursuant to an application which was filed in accordance with such section 8342(a) or the corresponding provision of the law establishing such other retirement system prior to that date, or

"(ii) otherwise ceased to be subject to subchapter III of chapter 83 of title 5, United States Code, for a period after December 31, 1983, to which section 210(a)(5)(G)(iii) of the Social Security Act [42 U.S.C. 410(a)(5)(G)(iii)] applies,

shall, if such individual again becomes subject to subchapter III of chapter 83 of title 5 (or effectively applies for coverage under such subchapter) after the date on which he last ceased to be subject to such subchapter but prior to, or within 30 days after, the date of the enactment of this Act [July 18, 1984], requalify for the exemption from social security coverage and taxes under section 210(a)(5) of the Social Security Act and section 3121(b)(5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 3121(b)(5)] as if the cessation of coverage under title 5 had not occurred.

"(2) An individual meeting the requirements of subparagraphs (A) and (B) of paragraph (1) who is not in the employ of the United States or an instrumentality thereof on the date of the enactment of this Act [July 18, 1984] may requalify for such exemptions in the same manner as under paragraph (1) if such individual again becomes subject to subchapter III of chapter 83 of title 5 (or effectively applies for coverage under such subchapter) within 30 days after the date on which he first returns to service in the legislative branch after such date of enactment, if such date (on which he returns to service) is within 365 days after he was last in the employ of the United States or an instrumentality thereof.

"(3) If an individual meeting the requirements of subparagraphs (A) and (B) of paragraph (1) does not again become subject to subchapter III of chapter 83 of title 5 (or effectively apply for coverage under such subchapter) prior to the date of the enactment of this Act or within the relevant 30-day period as provided in paragraph (1) or (2), social security coverage and taxes by reason of section 210(a)(5)(G) of the Social Security Act and section 3121(b)(5)(G) of the Internal Revenue Code of 1986 shall, with respect to such individual's service in the legislative branch of the Federal Government, become effective with the first month beginning after such 30-day period.

"(4) The provisions of paragraphs (1) and (2) shall apply only for purposes of reestablishing an exemption from social security coverage and taxes, and do not affect the amount of service to be credited to an individual for purposes of title 5, United States Code."

[Section 1883(a)(5) of Pub. L. 99-514 provided in part that amendment of above note by section 1883(a)(5)(A) of Pub. L. 99-514 is effective July 18, 1984.]

SERVICES PERFORMED FOR NONPROFIT ORGANIZATIONS BY FEDERAL EMPLOYEES

Section 2601(e) of Pub. L. 98-369, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) For purposes of section 210(a)(5) of the Social Security Act [42 U.S.C. 410(a)(5)] (as in effect in January 1983 and as in effect on and after January 1, 1984) and section 3121(b)(5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 3121(b)(5)] (as so in effect), service performed in the employ of a nonprofit organization described in section 501(c)(3) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(3)] by an employee who is required by law to be subject to subchapter III of chapter 83 of title 5, United States Code, with respect to such service, shall be considered to be service performed in the employ of an instrnmentality of the United States.

"(2) For purposes of section 203 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 [section 203 of Pub. L. 98-168, set out as a note under section 8331 of Title 5, Government Organization and Employees], service described in paragraph (1) which is also 'employment' for purposes of title II of the Social Security Act [42 U.S.C. 401 et seq.], shall be considered to be 'covered service'."

ACCRUED FEDERAL RETIREMENT ENTITLEMENTS; REDUCTION PROHIBITED

Section 101(e) of Pub. L. 98-21 provided that: "Nothing in this Act [see Short Title of 1983 Amendment

note set out under section 1305 of this title] shall reduce the accrued entitlements to future benefits under the Federal Retirement System of current and retired Federal employees and their families."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 401, 402, 403, 404, 405, 409, 411, 415, 416, 417, 418, 424a, 426, 426-1, 426a, 429, 1395i, 1395x of this title; title 5 section 8402; title 10 section 1451; title 20 section 125; title 26 section 3121; title 33 section 857; title 45 section 231q.

§ 411. Definitions relating to self-employment

For the purposes of this subchapter—

(a) Net earnings from self-employment

The term "net earnings from self-employment" means the gross income, as computed under subtitle A of the Internal Revenue Code of 1986, derived by an individual from any trade or business carried on by such individual, less the deductions allowed under such subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of the ordinary net income or loss, as computed under section 702(a)(8) of the Internal Revenue Code of 1986, from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary net income or loss—

[*See main edition for text of (1) and (2)*]

(3) There shall be excluded any gain or loss (A) which is considered under subtitle A of the Internal Revenue Code of 1986 as gain or loss from the sale or exchange of a capital asset, (B) from the cutting of timber, or the disposal of timber, coal, or iron ore, if section 631 of the Internal Revenue Code of 1986 applies to such gain or loss, or (C) from the sale, exchange, involuntary conversion, or other disposition of property if such property is neither (i) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, nor (ii) property held primarily for sale to customers in the ordinary course of the trade or business;

(4) The deduction for net operating losses provided in section 172 of the Internal Revenue Code of 1986 shall not be allowed;

[*See main edition for text of (5)*]

(6) A resident of the Commonwealth of Puerto Rico shall compute his net earnings from self-employment in the same manner as a citizen of the United States but without regard to the provisions of section 933 of the Internal Revenue Code of 1986;

(7) An individual who is a duly ordained, commissioned, or licensed minister of a church or a member of a religious order shall compute his net earnings from self-employment derived from the performance of service described in subsection (c)(4) of this section without regard to section 107 (relating to rental value of parsonages), section 119 (relating to meals and lodging furnished for the convenience of the employer), section 911 (relating to earned income from sources without the United States) and section 931 [6] (relating to income from sources within possessions of the United States) of the Internal Revenue Code of 1986;

(8) The term "possession of the United States" as used in sections 931 [6] (relating to income from sources within the possessions of the United States) and 932 [6] (relating to citizens of possessions of the United States) of the Internal Revenue Code of 1986 shall be deemed not to include the Virgin Islands, Guam, or American Samoa;

[*See main edition for text of (9)*]

(10) The exclusion from gross income provided by section 911(a)(1) of the Internal Revenue Code of 1986 shall not apply;

(11) In lieu of the deduction provided by section 164(f) of the Internal Revenue Code of 1986 (relating to deduction for one-half of self-employment taxes), there shall be allowed a deduction equal to the product of—

(A) the taxpayer's net earnings from self-employment for the taxable year (determined without regard to this paragraph), and

(B) one-half of the sum of the rates imposed by subsections (a) and (b) of section 1401 of such Code for such year;

(12) There shall be excluded the distributive share of any item of income or loss of a limited partner, as such, other than guaranteed payments described in section 707(c) of the Internal Revenue Code of 1986 to that partner for services actually rendered to or on behalf of the partnership to the extent that those payments are established to be in the nature of remuneration for those services; and

(13) In the case of church employee income, the special rules of subsection (i)(1) of this section shall apply.

If the taxable year of a partner is different from that of the partnership, the distributive share which he is required to include in computing his net earnings from self-employment shall be based upon the ordinary net income or loss of the partnership for any taxable year of the partnership (even though beginning prior to 1951) ending within or with his taxable year. In the case of any trade or business which is carried on by an individual or by a partnership and in which, if such trade or business were carried on exclusively by employees, the major portion of the services would constitute agricultural labor as defined in section 410(f) of this title—

[*See main edition for text of (i) and (ii)*]

(iii) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) of the Internal Revenue

[6] See References in Text note below.

Code of 1986 applies) is not more than $2,400, his distributive share of income described in section 702(a)(8) of the Internal Revenue Code of 1986, derived from such trade or business may, at his option, be deemed to be an amount equal to 66⅔ percent of his distributive share of such gross income (after such gross income has been so reduced); or

(iv) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) of the Internal Revenue Code of 1986 applies) is more than $2,400 and his distributive share (whether or not distributed) of income described in section 702(a)(8) of such Code, derived from such trade or business (computed under this subsection without regard to this sentence) is less than $1,600, his distributive share of income described in such section 702(a)(8) derived from such trade or business may, at his option, be deemed to be $1,600.

For purposes of the preceding sentence, gross income means—

[*See main edition for text of (v) and (vi)*]

and, for purposes of such sentence, if an individual (including a member of a partnership) derives gross income from more than one such trade or business, such gross income (including his distributive share of the gross income of any partnership derived from any such trade or business) shall be deemed to have been derived from one trade or business.

The preceding sentence and clauses (i) through (iv) of the second preceding sentence shall also apply in the case of any trade or business (other than a trade or business specified in such second preceding sentence) which is carried on by an individual who is self-employed on a regular basis as defined in subsection (g) of this section, or by a partnership of which an individual is a member on a regular basis as defined in subsection (g) of this section, but only if such individual's net earnings from self-employment in the taxable year as determined without regard to this sentence are less than $1,600 and less than 66⅔ percent of the sum (in such taxable year) of such individual's gross income derived from all trades or businesses carried on by him and his distributive share of the income or loss from all trades or businesses carried on by all the partnerships of which he is a member; except that this sentence shall not apply to more than 5 taxable years in the case of any individual, and in no case in which an individual elects to determine the amount of his net earnings from self-employment for a taxable year under the provisions of the two preceding sentences with respect to a trade or business to which the second preceding sentence applies and with respect to a trade or business to which this sentence applies shall such net earnings for such year exceed $1,600.

(b) Self-employment income

The term "self-employment income" means the net earnings from self-employment derived by an individual (other than a nonresident alien individual, except as provided by an agreement under section 433 of this title) during any taxable year beginning after 1950; except that such term shall not include—

[*See main edition for text of (1) and (2)*]

An individual who is not a citizen of the United States but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa shall not, for the purpose of this subsection, be considered to be a nonresident alien individual. In the case of church employee income, the special rules of subsection (i)(2) of this section shall apply for purposes of paragraph (2).

(c) Trade or business

The term "trade or business", when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 162 of the Internal Revenue Code of 1986, except that such term shall not include—

[*See main edition for text of (1)*]

(2) The performance of service by an individual as an employee, other than—

[*See main edition for text of (A) to (D)*]

(E) service performed by an individual as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis with respect to fees received in any period in which such service is not covered under an agreement entered into by such State and the Secretary pursuant to section 418 of this title,

(F) service described in section 410(a)(20) of this title, and

(G) service described in section 410(a)(8)(B) of this title;

(3) The performance of service by an individual as an employee or employee representative as defined in section 3231 of the Internal Revenue Code of 1986;

[*See main edition for text of (4) and (5)*]

(6) The performance of service by an individual during the period for which an exemption under section 1402(g) of the Internal Revenue Code of 1986 is effective with respect to him.

The provisions of paragraph (4) or (5) shall not apply to service (other than service performed by a member of a religious order who has taken a vow of poverty as a member of such order) performed by an individual unless an exemption under section 1402(e) of the Internal Revenue Code of 1986 is effective with respect to him.

(d) Partnership and partner

The term "partnership" and the term "partner" shall have the same meaning as when used in subchapter K of chapter 1 of the Internal Revenue Code of 1986.

(e) Taxable year

The term "taxable year" shall have the same meaning as when used in subtitle A of the Internal Revenue Code of 1986; and the taxable year of any individual shall be a calendar year unless he has a different taxable year for the purposes of subtitle A of the Internal Revenue Code of 1986, in which case his taxable year for the purposes of this subchapter shall be the same as his taxable year under subtitle A of the Internal Revenue Code of 1986.

[*See main edition for text of (f) and (g)*]

(b) Option dealers and commodity dealers

(1) In determining the net earnings from self-employment of any options dealer or commodities dealer—

(A) notwithstanding subsection (a)(3)(A) of this section, there shall not be excluded any gain or loss (in the normal course of the taxpayer's activity of dealing in or trading section 1256 contracts) from section 1256 contracts or property related to such contracts, and

(B) the deduction provided by section 1202 of the Internal Revenue Code of 1986 shall not apply.

(2) For purposes of this subsection—

(A) The term "options dealer" has the meaning given such term by section 1256(g)(8) of the Internal Revenue Code of 1986.

(B) The term "commodities dealer" means a person who is actively engaged in trading section 1256 contracts and is registered with a domestic board of trade which is designated as a contract market by the Commodities Futures Trading Commission.

(C) The term "section 1256 contracts" has the meaning given to such term by section 1256(b) of the Internal Revenue Code of 1986.

(i) Church employee income

(1) In applying subsection (a) of this section—

(A) church employee income shall not be reduced by any deduction;

(B) church employee income and deductions attributable to such income shall not be taken into account in determining the amount of other net earnings from self-employment.

(2)(A) Subsection (b)(2) of this section shall be applied separately—

(i) to church employee income, and

(ii) to other net earnings from self-employment.

(B) In applying subsection (b)(2) of this section to church employee income, "$100" shall be substituted for "$400".

(3) Paragraph (1) shall not apply to any amount allowable as a deduction under subsection (a)(11) of this section, and paragraph (1) shall be applied before determining the amount so allowable.

(4) For purposes of this section, the term "church employee income" means gross income for services which are described in section 410(a)(8)(B) of this title (and are not described in section 410(a)(8)(A) of this title).

(As amended Apr. 20, 1983, Pub. L. 98-21, title III, §§ 322(b)(1), 323(b)(2), 97 Stat. 121; July 18, 1984, Pub. L. 98-369, div. A, title I, § 102(c)(2), div. B, title VI, §§ 2603(c)(1), (d)(1), 2663(a)(8), 98 Stat. 622, 1129, 1163; Oct. 22, 1986, Pub. L. 99-514, § 2, title XVIII, §§ 1882(b)(2), 1883(a)(6), 100 Stat. 2095, 2915, 2916.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in text, is classified to Title 26, Internal Revenue Code.

Section 931 of the Internal Revenue Code of 1986, referred to in subsec. (a)(7), (8), was amended generally by Pub. L. 99-514 which substituted provisions relating to income from sources within Guam, American Samoa, or the Virgin Islands, for former provisions relating to income from sources within the possessions of the United States.

Section 932 of the Internal Revenue Code of 1986, referred to in subsec. (a)(8), which related to income taxation of citizens of possessions of the United States, was repealed and a new section 932 (coordination of United States and Virgin Islands income taxes) was enacted by Pub. L. 99-514.

AMENDMENTS

1966—Subsec. (a). Pub. L. 99-514, § 2, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" wherever appearing.

Subsec. (a)(13). Pub. L. 99-514, § 1882(b)(2)(B)(i), amended par. (13) generally. Prior to amendment, par. (13) read as follows: "With respect to remuneration for service which are treated as services in a trade or business under subsection (c)(2)(G) of this section—

"(A) no deduction for trade or business expenses provided under the Internal Revenue Code of 1954 (other than the deduction under paragraph (11) of this subsection) shall apply;

"(B) the provisions of subsection (b)(2) of this section shall not apply; and

"(C) if the amount of such remuneration from an employer for the taxable year is less than $100, such remuneration from that employer shall not be included in self-employment income."

Subsec. (b). Pub. L. 99-514, § 1882(b)(2)(B)(ii), inserted at end "In the case of church employee income, the special rules of subsection (i)(2) of this section shall apply for purposes of paragraph (2)."

Subsec. (c). Pub. L. 99-514, § 2, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" wherever appearing.

Subsec. (c)(2)(G). Pub. L. 99-514, § 1883(a)(6), realigned margins of subpar. (G).

Subsecs. (d), (e), (h). Pub. L. 99-514, § 2, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" wherever appearing.

Subsec. (i). Pub. L. 99-514, § 1882(b)(2)(A), added subsec. (i).

1984—Subsec. (a). Pub. L. 98-369, § 2663(a)(8)(A), substituted "subtitle A of the Internal Revenue Code of 1954" for "chapter 1 of the Internal Revenue Code of 1939", "such subtitle" for "such chapter", and "section 702(a)(8) of the Internal Revenue Code of 1954" for "section 183 of the Internal Revenue Code of 1939".

Pub. L. 98-369, § 2663(a)(8)(D), in provisions following numbered pars., substituted "702(a)(8)" for "702(a)(9)" in cl. (iii) and in two places in cl. (iv).

Subsec. (a)(3). Pub. L. 98-369, § 2663(a)(8)(B), substituted "subtitle A of the Internal Revenue Code of 1954" for "chapter 1 of the Internal Revenue Code of 1939" and inserted "or" before "(C)".

Subsec. (a)(4). Pub. L. 98-369, § 2663(a)(8)(C), substituted "section 172 of the Internal Revenue Code of 1954" for "section 23(s) of the Internal Revenue Code of 1939".

Subsec. (a)(13). Pub. L. 98-369, § 2603(d)(1), added par. (13).

Subsec. (b)(1)(D), (G) to (I). Pub. L. 98-369, § 2663(a)(8)(E), realigned margins of subpars. (D) and (G) to (I).

Subsec. (c). Pub. L. 98-369, § 2863(a)(8)(F), substituted "section 162 of the Internal Revenue Code of 1954" for "section 23 of the Internal Revenue Code of 1939" in provisions preceding par. (1).

Subsec. (c)(2)(G). Pub. L. 98-369, § 2603(c)(1), added subpar. (G).

Subsec. (c)(3). Pub. L. 98-369, § 2663(a)(8)(G), substituted "section 3231 of the Internal Revenue Code of 1954" for "section 1532 of the Internal Revenue Code of 1939".

Subsec. (d). Pub. L. 98-369, § 2663(a)(8)(H), substituted "subchapter K of chapter 1 of the Internal Revenue Code of 1954" for "supplement F of chapter 1 of the Internal Revenue Code of 1939".

Subsec. (e). Pub. L. 98-369, § 2663(a)(8)(I), substituted "subtitle A of the Internal Revenue Code of 1954" for "chapter 1 of the Internal Revenue Code of 1939" in three places.

Subsec. (h). Pub. L. 98-369, § 102(c)(2), added subsec. (h).

1983—Subsec. (a)(10). Pub. L. 98-21, § 323(b)(2)(A), substituted "The exclusion from gross income provided by section 911(a)(1) of the Internal Revenue Code of 1954 shall not apply" for "In the case of an individual described in section 911(d)(1)(B) of the Internal Revenue Code of 1954, the exclusion from gross income provided by section 911(a)(1) of such Code shall not apply".

Pub. L. 98-21, § 323(b)(2)(B), temporarily amended par. (10) by substituting "In the case of an individual described in section 911(d)(1)(B) of the Internal Revenue Code of 1954, the exclusion from gross income provided by section 911(a)(1) of such Code shall not apply" for "In the case of an individual who has been a resident of the United States during the entire taxable year, the exclusion from gross income provided by section 911(a)(2) of the Internal Revenue Code of 1954 shall not apply". See Effective and Termination Dates of 1983 Amendment note below.

Subsec. (a)(11), (12). Pub. L. 98-21, § 124(c)(3), added par. (11) and redesignated former par. (11) as (12).

Subsec. (b). Pub. L. 98-21, § 322(b)(1), which directed that phrase ", except as provided by an agreement under section 433 of this title" be inserted after "nonresident alien individual" was executed by inserting that phrase the first time those words appeared, in provisions preceding par. (1), and not the second time those words appeared, in provisions following par. (2), as the probable intent of Congress.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1882(b)(2) of Pub. L. 99-514 applicable to remuneration paid or derived in taxable years beginning after Dec. 31, 1985, see section 1882(b)(3) of Pub. L. 99-514, set out as a note under section 1402 of Title 26, Internal Revenue Code.

Amendment by section 1883(a)(6) of Pub. L. 99-514 effective Oct. 22, 1986, see section 1883(f) of Pub. L. 99-514, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 102(c)(2) of Pub. L. 98-369 applicable to taxable years beginning after July 18, 1984, except as otherwise provided, see section 102(f)(3), (g) of Pub. L. 98-369, set out as a note under section 1256 of Title 26, Internal Revenue Code.

Amendment by section 2603 of Pub. L. 98-369 applicable to service performed after Dec. 31, 1983, see section 2603(e) of Pub. L. 98-369, set out as a note under section 410 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENT

Enactment of subsec. (a)(11) and redesignation of former subsec. (a)(11) as (a)(12) by section 124(c)(3) of Pub. L. 98-21 applicable to taxable years beginning after Dec. 31, 1989, sec section 124(d)(2) of Pub. L. 98-21, set out as an Effective Date of 1983 Amendment note under section 1401 of Title 26, Internal Revenue Code.

Amendment by section 322 of Pub. L. 98-21 effective in taxable years beginning on or after Apr. 20, 1983, see section 322(c) of Pub. L. 98-21, set out as an Effective Date of 1983 Amendment note under section 3121 of Title 26.

Amendment of subsec. (a)(10) by section 323(b)(2)(A) of Pub. L. 98-21 applicable to taxable years beginning after Dec. 31, 1983, see section 323(c)(2) of Pub. L. 98-21, set out as an Effective Date of 1983 Amendment note under section 1402 of Title 26.

Section 323(b)(2)(B) of Pub. L. 98-21 provided in part that the amendment of subsec. (a)(10) of this section by section 323(b)(2)(B) of Pub. L. 98-21 is effective with respect to taxable years beginning after Dec. 31, 1981, and before Jan. 1, 1984.

§ 413. Quarter and quarter of coverage

(a) Definitions

For the purposes of this subchapter—

(1) The term "quarter", and the term "calendar quarter", mean a period of three calendar months ending on March 31, June 30, September 30, or December 31.

(2)(A) The term "quarter of coverage" means—

[*See main edition for text of (i) and (ii)*]

(B) Notwithstanding the provisions of subparagraph (A)—

[*See main edition for text of (i)*]

(ii) if the wages paid to an individual in any calendar year equal $3,000 in the case of a calendar year before 1951, or $3,600 in the case of a calendar year after 1950 and before 1955, or $4,200 in the case of a calendar year after 1954 and before 1959, or $4,800 in the case of a calendar year after 1958 and before 1966, or $6,600 in the case of a calendar year after 1965 and before 1968, or $7,800 in the case of a calendar year after 1967 and before 1972, or $9,000 in the case of the calendar year 1972, or $10,800 in the case of the calendar year 1973, or $13,200 in the case of the calendar year 1974, or an amount equal to the contribution and benefit base (as determined under section 430 of this title) in the case of any calendar year after 1974 and before 1978 with respect to which such contribution and benefit base is effective, each quarter of such year shall (subject to clauses (i) and (v)) be a quarter of coverage;

[*See main edition for text of (iii) to (vii)*]

If in the case of an individual who has attained age 62 or died or is under a disability and who has been paid wages for agricultural labor in a calendar year after 1954 and before 1978, the requirements for insured status in subsection (a) or (b) of section 414 of this title, the requirements for entitlement to a computation or

recomputation of his primary insurance amount, or the requirements of paragraph (3) of section 416(i) of this title are not met after assignment of quarters of coverage to quarters in such year as provided in clause (iv) of the preceding sentence, but would be met if such quarters of coverage were assigned to different quarters in such year, then such quarters of coverage shall instead be assigned, for purposes only of determining compliance with such requirements, to such different quarters. If, in the case of an individual who did not die prior to January 1, 1955, and who attained age 62 (if a woman) or age 65 (if a man) or died before July 1, 1957, the requirements for insured status in section 414(a)(3) of this title are not met because of his having too few quarters of coverage but would be met if his quarters of coverage in the first calendar year in which he had any covered employment had been determined on the basis of the period during which wages were earned rather than on the basis of the period during which wages were paid (any such wages paid that are reallocated on an earned basis shall not be used in determining quarters of coverage for subsequent calendar years), then upon application filed by the individual or his survivors and satisfactory proof of his record of wages earned being furnished by such individual or his survivors, the quarters of coverage in such calendar year may be determined on the basis of the periods during which wages were earned.

[*See main edition for text of* (b) *to* (d)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(a)(9), 98 Stat. 1164.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-369, § 2663(a)(9)(A), substituted "mean" for "means".

Subsec. (a)(2)(B)(ii). Pub. L. 98-369, § 2663(a)(9)(B), substituted "equal $3,000" for "equal to $3,000".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 414. Insured status for purposes of old-age and survivors insurance benefits

EMPLOYEES OF NONPROFIT ORGANIZATIONS AS FULLY INSURED INDIVIDUALS

Pub. L. 98-21, title I, § 102(e), Apr. 20, 1983, 97 Stat. 71, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) If any individual—

"(A) on January 1, 1984, is age 55 or over, and is an employee of an organization described in section 210(a)(8)(B) of the Social Security Act [42 U.S.C 410(a)(8)(B)] (A) which does not have in effect (on that date) a waiver certificate under section 3121(k) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 3121(k)] and (B) to the employees of which social security coverage is extended on January 1, 1984, solely by reason of the enactment of this section [amending section 410 of this title and section 3121 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under section 3121 of Title 26], and

"(B) after December 31, 1983, acquires the number of quarters of coverage (within the meaning of section 213 of the Social Security Act [42 U.S.C. 413]) which is required for purposes of this subparagraph under paragraph (2),

then such individual shall be deemed to be a fully insured individual (as defined in section 214 of the Social Security Act [42 U.S.C. 414]) for all of the purposes of title II of such Act [this subchapter].

"(2) The number of quarters of coverage which is required for purposes of subparagraph (B) of paragraph (1) shall be determined as follows:

"In the case of an individual who on January 1, 1984, is—	The number of quarters of coverage so required shall be—
age 60 or over	6
age 59 or over but less than age 60	8
age 58 or over but less than age 59	12
age 57 or over but less than age 56	16
age 55 or over but less than age 57	20."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 402, 413, 416, 423, 426-1, 427 of this title; title 5 sections 8349, 8421; title 38 section 412; title 45 section 231.

§ 415. Computation of primary insurance amount

For the purposes of this subchapter—

(a) Primary insurance amount

(1) [*See main edition for text of* (A)]

(B)(i) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming eligible for such benefits), in the calendar year 1979, the amount established for purposes of clause (i) and (ii) of subparagraph (A) shall be $180 and $1,085, respectively.

[*See main edition for text of* (ii)]

(iii) Each amount established under clause (ii) for any calendar year shall be rounded to the nearest $1, except that any amount so established which is a multiple of $0.50 but not of $1 shall be rounded to the next higher $1.

(C) [*See main edition for text of* (i)]

(ii) For purposes of clause (i), the term "years of coverage" with respect to any individual means the number (not exceeding 30) equal to the sum of (I) the number (not exceeding 14 and disregarding any fraction) determined by dividing (a) the total of the wages credited to such individual (including wages deemed to be paid prior to 1951 to such individual under section 417 of this title, compensation under the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.] prior to 1951 which is creditable to such individual pursuant to this subchapter, and wages deemed to be paid prior to 1951 to such individual under section 431 of this title) for years after 1936 and before 1951 by (b) $900, plus (II) the number equal to the number of years after 1950 each of which is a computation base year (within the meaning of subsection (b)(2)(B)(ii) of this section) and in each of which he is credited with wages (including wages deemed to be paid to such individual under section 417 of this title, compensation under the Railroad Retirement Act of 1937 or 1974 [45 U.S.C. 228a et seq., 231 et seq.] which is creditable to such individual pursuant to this

subchapter, and wages deemed to be paid to such individual under section 429 of this title) and self-employment income of not less than 25 percent of the maximum amount which, pursuant to subsection (e) of this section, may be counted for such year, or of not less than 25 percent of the maximum amount which could be so counted for such year (in the case of a year after 1977) if section 430 of this title as in effect immediately prior to December 20, 1977, had remained in effect without change.

[*See main edition for text of (D), (2) to (6)*]

(7)(A) In the case of an individual whose primary insurance amount would be computed under paragraph (1) of this subsection, who—

(i) attains age 62 after 1985 (except where he or she became entitled to a disability insurance benefit before 1986 and remained so entitled in any of the 12 months immediately preceding his or her attainment of age 62), or

(ii) would attain age 62 after 1985 and becomes eligible for a disability insurance benefit after 1985,

and who first becomes eligible after 1985 for a monthly periodic payment (including a payment determined under subparagraph (C), but excluding a payment under the Railroad Retirement Act of 1974 or 1937 [45 U.S.C. 231 et seq., 228a et seq.]) which is based in whole or in part upon his or her earnings for service which did not constitute "employment" as defined in section 410 of this title for purposes of this subchapter (hereafter in this paragraph and in subsection (d)(5) of this section referred to as "noncovered service"), the primary insurance amount of that individual during his or her concurrent entitlement to such monthly periodic payment and to old-age or disability insurance benefits shall be computed or recomputed under subparagraph (B) with respect to the initial month in which the individual becomes eligible for such benefits.

(B)(i) If paragraph (1) of this subsection would apply to such an individual (except for subparagraph (A) of this paragraph), there shall first be computed an amount equal to the individual's primary insurance amount under paragraph (1) of this subsection, except that for purposes of such computation the percentage of the individual's average indexed monthly earnings established by subparagraph (A)(i) of paragraph (1) shall be the percent specified in clause (ii). There shall then be computed (without regard to this paragraph) a second amount, which shall be equal to the individual's primary insurance amount under paragraph (1) of this subsection, except that such second amount shall be reduced by an amount equal to one-half of the portion of the monthly periodic payment which is attributable to noncovered service performed after 1956 (with such attribution being based on the proportionate number of years of such noncovered service) and to which the individual is entitled (or is deemed to be entitled) for the initial month of his or her eligibility for old-age or disability insurance benefits. The individual's primary insurance amount shall be the larger of the two amounts computed under this subparagraph (before the application of subsection (i) of this section) and shall be deemed to be computed under paragraph (1) of this subsection for the purpose of applying other provisions of this subchapter.

(ii) For purposes of clause (i), the percent specified in this clause is—

(I) 80.0 percent with respect to individuals who become eligible (as defined in paragraph (3)(B)) for old-age insurance benefits (or became eligible as so defined for disability insurance benefits before attaining age 62) in 1986;

(II) 70.0 percent with respect to individuals who so become eligible in 1987;

(III) 60.0 percent with respect to individuals who so become eligible in 1988;

(IV) 50.0 percent with respect to individuals who so become eligible in 1989; and

(V) 40.0 percent with respect to individuals who so become eligible in 1990 or thereafter.

(C)(i) Any periodic payment which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly payment (as determined by the Secretary), and such equivalent monthly payment shall constitute a monthly periodic payment for purposes of this paragraph.

(ii) In the case of an individual who has elected to receive a periodic payment that has been reduced so as to provide a survivor's benefit to any other individual, the payment shall be deemed to be increased (for purposes of any computation under this paragraph or subsection (d)(5) of this section) by the amount of such reduction.

(iii) If an individual to whom subparagraph (A) applies is eligible for a periodic payment beginning with a month that is subsequent to the month in which he or she becomes eligible for old-age or disability insurance benefits, the amount of that payment (for purposes of subparagraph (B)) shall be deemed to be the amount to which he or she is, or is deemed to be, entitled (subject to clauses (i), (ii), and (iv) of this subparagraph) in such subsequent month.

(iv) For purposes of this paragraph, the term "periodic payment" includes a payment payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(D) This paragraph shall not apply in the case of an individual who has 30 years or more of coverage (as defined in paragraph (1)(C)(ii)). In the case of an individual who has more than 25 years of coverage but less than 30 years of coverage (as so defined), the percent specified in the applicable subdivision of subparagraph (B)(ii) shall (if such percent is smaller than the percent specified in whichever of the following clauses applies) be deemed to be—

(i) 80 percent, in the case of an individual who has 29 of such years of coverage;

(ii) 70 percent, in the case of an individual who has 28 of such years;

(iii) 60 percent, in the case of an individual who has 27 of such years; and

(iv) 50 percent, in the case of an individual who has 26 of such years.

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(E) This paragraph shall not apply in the case of an individual who on January 1, 1984—

(i) is an employee performing service to which social security coverage is extended on that date solely by reason of the amendments made by section 101 of the Social Security Amendments of 1983; or

(ii) is an employee of a nonprofit organization which (on December 31, 1983) did not have in effect a waiver certificate under section 3121(k) of the Internal Revenue Code of 1986 and to the employees of which social security coverage is extended on that date solely by reason of the amendments made by section 102 of that Act, unless social security coverage had previously extended to service performed by such individual as an employee of that organization under a waiver certificate which was subsequently (prior to December 31, 1983) terminated.

[*See main edition for text of* (b) *and* (c)]

(d) Primary insurance amount under 1939 Act

[*See main edition for text of* (1) *to* (4)]

(5) In the case of an individual whose primary insurance amount is not computed under paragraph (1) of subsection (a) of this section by reason of paragraph (4)(B)(ii) of that subsection, who—

(A) attains age 62 after 1985 (except where he or she became entitled to a disability insurance benefit before 1986, and remained so entitled in any of the 12 months immediately preceding his or her attainment of age 62), or

(B) would attain age 62 after 1985 and becomes eligible for a disability insurance benefit after 1985,

and who first becomes eligible after 1985 for a monthly periodic payment (including a payment determined under subsection (a)(7)(C) of this section, but excluding a payment under the Railroad Retirement Act of 1974 or 1937 [45 U.S.C. 231 et seq., 228a et seq.]) which is based (in whole or in part) upon his or her earnings in noncovered service, the primary insurance amount of such individual during his or her concurrent entitlement to such monthly periodic payment and to old-age or disability insurance benefits shall be the primary insurance amount computed or recomputed under this subsection (without regard to this paragraph and before the application of subsection (i) of this section) reduced by an amount equal to the smaller of—

(i) one-half of the primary insurance amount (computed without regard to this paragraph and before the application of subsection (i) of this section), or

(ii) one-half of the portion of the monthly periodic payment (or payment determined under subsection (a)(7)(C) of this section) which is attributable to noncovered service performed after 1956 (with such attribution being based on the proportionate number of years of such noncovered service) and to which that individual is entitled (or is deemed to be entitled) for the initial month of his or her eligibility for old-age or disability insurance benefits.

This paragraph shall not apply in the case of any individual to whom subsection (a)(7) of this section would not apply by reason of subparagraph (E) or the first sentence of subparagraph (D) thereof.

[*See main edition for text of* (e)]

(f) Recomputation of benefits

[*See main edition for text of* (1)]

(2)(A) If an individual has wages or self-employment income for a year after 1978 for any part of which he is entitled to old-age or disability insurance benefits, the Secretary shall, at such time or times and within such period as he may by regulation prescribe, recompute the individual's primary insurance amount for that year.

[*See main edition for text of* (B) *to* (D), (3) *and* (4)]

(5) In the case of a man who became entitled to old-age insurance benefits and died before the month in which he attained retirement age (as defined in section 416(*l*) of this title), the Secretary shall recompute his primary insurance amount as provided in subsection (a) of this section as though he became entitled to old-age insurance benefits in the month in which he died; except that (i) his computation base years referred to in subsection (b)(2) of this section shall include the year in which he died, and (ii) his elapsed years referred to in subsection (b)(3) of this section shall not include the year in which he died or any year thereafter. Such recomputation of such primary insurance amount shall be effective for and after the month in which he died.

[*See main edition for text of* (6) *to* (8)]

(9)(A) In the case of an individual who becomes entitled to a periodic payment determined under subsection (a)(7)(A) of this section (including a payment determined under subsection (a)(7)(C) of this section) in a month subsequent to the first month in which he or she becomes entitled to an old-age or disability insurance benefit, and whose primary insurance amount has been computed without regard to either such subsection or subsection (d)(5) of this section, such individual's primary insurance amount shall be recomputed (notwithstanding paragraph (4) of this subsection), in accordance with either such subsection or subsection (d)(5) of this section, as may be applicable, effective with the first month of his or her concurrent entitlement to such benefit and such periodic payment.

(B) If an individual's primary insurance amount has been computed under subsection (a)(7) or (d)(5) of this section, and it becomes necessary to recompute that primary insurance amount under this subsection—

(i) so as to increase the monthly benefit amount payable with respect to such primary insurance amount (except in the case of the individual's death), such increase shall be determined as though the recomputed primary insurance amount were being computed

under subsection (a)(7) or (d)(5) of this section, or

(ii) by reason of the individual's death, such primary insurance amount shall be recomputed without regard to (and as though it had never been computed with regard to) subsection (a)(7) or (d)(5) of this section.

[*See main edition for text of (g)*]

(b) Service of certain Public Health Service Officers

(1) Notwithstanding the provisions of subchapter III of chapter 83 of title 5, remuneration paid for service to which the provisions of section 410(*l*)(1) of this title are applicable and which is performed by an individual as a commissioned officer of the Reserve Corps of the Public Health Service prior to July 1, 1960, shall not be included in computing entitlement to or the amount of any monthly benefit under this subchapter, on the basis of his wages and self-employment income, for any month after June 1960 and prior to the first month with respect to which the Director of the Office of Personnel Management certifies to the Secretary that, by reason of a waiver filed as provided in paragraph (2), no further annuity will be paid to him, his wife, and his children, or, if he has died, te his widow and children, under subchapter III of chapter 83 of title 5 on the basis of such service.

[*See main edition for text of (2)*]

(l) Cost-of-living increases in benefits

(1) For purposes of this subsection—

(A) the term "base quarter" means (i) the calendar quarter ending on September 30 in each year after 1982, or (ii) any other calendar quarter in which occurs the effective month of a general benefit increase under this subchapter;

(B) the term "cost-of-living computation quarter" means a base quarter, as defined in subparagraph (A)(i), with respect to which the applicable increase percentage is greater than zero; except that there shall be no cost-of-living computation quarter in any calendar year if in the year prior to such year a law has been enacted providing a general benefit increase under this subchapter or if in such prior year such a general benefit increase becomes effective;

(C) the term "applicable increase percentage" means—

(i) with respect to a base quarter or cost-of-living computation quarter in any calendar year before 1984, or in any calendar year after 1983 and before 1989 for which the OASDI fund ratio is 15.0 percent or more, or in any calendar year after 1988 for which the OASDI fund ratio is 20.0 percent or more, the CPI increase percentage; and

(ii) with respect to a base quarter or cost-of-living computation quarter in any calendar year after 1983 and before 1989 for which the OASDI fund ratio is less than 15.0 percent, or in any calendar year after 1988 for which the OASDI fund ratio is less than 20.0 percent, the CPI increase percentage or the wage increase percentage, whichever (with respect to that quarter) is the lower;

(D) the term "CPI increase percentage", with respect to a base quarter or cost-of-living computation quarter in any calendar year, means the percentage (rounded to the nearest one-tenth of 1 percent) by which the Consumer Price Index for that quarter (as prepared by the Department of Labor) exceeds such index for the most recent prior calendar quarter which was a base quarter under subparagraph (A)(ii) or, if later, the most recent cost-of-living computation quarter under subparagraph (B);

(E) the term "wage increase percentage", with respect to a base quarter or cost-of-living computation quarter in any calendar year, means the percentage (rounded to the nearest one-tenth of 1 percent) by which the SSA average wage index for the year immediately preceding such calendar year exceeds such index for the year immediately preceding the most recent prior calendar year which included a base quarter under subparagraph (A)(ii) or, if later, which included a cost-of-living computation quarter;

(F) the term "OASDI fund ratio", with respect to any calendar year, means the ratio of—

(i) the combined balance in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund as of the beginning of such year, including the taxes transferred under section 401(a) of this title on the first day of such year and reduced by the outstanding amount of any loan (including interest thereon) theretofore made to either such Fund from the Federal Hospital Insurance Trust Fund under section 401(*l*) of this title, to

(ii) the total amount which (as estimated by the Secretary) will be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund during such calendar year for all purposes authorized by section 401 of this title (other than payments of interest on, or repayments of, loans from the Federal Hospital Insurance Trust Fund under section 401(*l*) of this title), but excluding any transfer payments between such trust funds and reducing the amount of any transfers to the Railroad Retirement Account by the amount of any transfers into either such trust fund from that Account;

(G) the term "SSA average wage index", with respect to any calendar year, means the average of the total wages reported to the Secretary of the Treasury or his delegate as determined for purposes of subsection (b)(3)(A)(ii) of this section; and

(H) the Consumer Price Index for a base quarter, a cost-of-living computation quarter, or any other calendar quarter shall be the arithmetical mean of such index for the 3 months in such quarter.

(2)(A)(i) The Secretary shall determine each year beginning with 1975 (subject to the limitation in paragraph (1)(B)) whether the base quarter (as defined in paragraph (1)(A)(i)) in

such year is a cost-of-living computation quarter.

(ii) If the Secretary determines that the base quarter in any year is a cost-of-living computation quarter, he shall, effective with the month of December of that year as provided in subparagraph (B), increase—

[See main edition for text of (I) to (III)]

The increase shall be derived by multiplying each of the amounts described in subdivisions (I), (II), and (III) (including each of those amounts as previously increased under this subparagraph) by the applicable increase percentage; and any amount so increased that is not a multiple of $0.10 shall be decreased to the next lower multiple of $0.10. Any increase under this subsection in a primary insurance amount determined under subparagraph (C)(i) of subsection (a)(1) of this section shall be applied after the initial determination of such primary insurance amount under that subparagraph (with the amount of such increase, in the case of an individual who becomes eligible for old-age or disability insurance benefits or dies in a calendar year after 1979, being determined from the range of possible primary insurance amounts published by the Secretary under the last sentence of subparagraph (D)).

(iii) In the case of an individual who becomes eligible for an old-age or disability insurance benefit, or who dies prior to becoming so eligible, in a year in which there occurs an increase provided under clause (ii), the individual's primary insurance amount (without regard to the time of entitlement to that benefit) shall be increased (unless otherwise so increased under another provision of this subchapter and, with respect to a primary insurance amount determined under subsection (a)(1)(C)(i)(I) of this section in the case of an individual to whom that subsection (as in effect in December 1981) applied, subject to the provisions of subsection (a)(1)(C)(i) of this section and clauses (iv) and (v) of this subparagraph (as then in effect)) by the amount of that increase and subsequent applicable increases, but only with respect to benefits payable for months after November of that year.

(B) The increase provided by subparagraph (A) with respect to a particular cost-of-living computation quarter shall apply in the case of monthly benefits under this subchapter for months after November of the calendar year in which occurred such cost-of-living computation quarter, and in the case of lump-sum death payments with respect to deaths occurring after November of such calendar year.

(C)(i) Whenever the Secretary determines that a base quarter in a calendar year is also a cost-of-living computation quarter, he shall notify the House Committee on Ways and Means and the Senate Committee on Finance of such determination within 30 days after the close of such quarter, indicating the amount of the benefit increase to be provided, his estimate of the extent to which the cost of such increase would be met by an increase in the contribution and benefit base under section 430 of this title and the estimated amount of the increase in such base, the actuarial estimates of the effect of such increase, and the actuarial assumptions and methodology used in preparing such estimates.

(ii) The Secretary shall determine and promulgate the OASDI fund ratio for the current calendar year and the SSA wage index for the preceding calendar year before November 1 of the current calendar year, based upon the most recent data then available, and shall include a statement of such fund ratio and wage index (and of the effect such ratio and the level of such index may have upon benefit increases under this subsection) in any notification made under clause (i) and any determination published under subparagraph (D).

[See main edition for text of (D), (3)]

(4) This subsection as in effect in December 1978, and as amended by sections 111(a)(6), 111(b)(2), and 112 of the Social Security Amendments of 1983 and by section 9001 of the Omnibus Budget Reconciliation Act of 1986, shall continue to apply to subsections (a) and (d) of this section, as then in effect, for purposes of computing the primary insurance amount of an individual to whom subsection (a) of this section, as in effect after December 1978, does not apply (including an individual to whom subsection (a) of this section does not apply in any year by reason of paragraph (4)(B) of that subsection (but the application of this subsection in such cases shall be modified by the application of subdivision (I) in the last sentence of paragraph (4) of that subsection)), except that for this purpose, in applying paragraphs (2)(A)(ii), (2)(D)(iv), and (2)(D)(v) of this subsection as in effect in December 1978, the phrase "increased to the next higher multiple of $0.10" shall be deemed to read "decreased to the next lower multiple of $0.10". For purposes of computing primary insurance amounts and maximum family benefits (other than primary insurance amounts and maximum family benefits for individuals to whom such paragraph (4)(B) applies), the Secretary shall revise the table of benefits contained in subsection (a) of this section, as in effect in December 1978, in accordance with the requirements of paragraph (2)(D) of this subsection as then in effect, except that the requirement in such paragraph (2)(D) that the Secretary publish such revision of the table of benefits in the Federal Register shall not apply.

(5)(A) If—

(i) with respect to any calendar year the "applicable increase percentage" was determined under clause (ii) of paragraph (1)(C) rather than under clause (i) of such paragraph, and the increase becoming effective under paragraph (2) in such year was accordingly determined on the basis of the wage increase percentage rather than the CPI increase percentage (or there was no such increase becoming effective under paragraph (2) in that year because there was no wage increase percentage greater than zero), and

(ii) for any subsequent calendar year in which an increase under paragraph (2) becomes effective the OASDI fund ratio is greater than 32.0 percent,

then each of the amounts described in subdivisions (I), (II), and (III) of paragraph (2)(A)(ii), as increased under paragraph (2) effective with the month of December in such subsequent calendar year, shall be further increased (effective with such month) by an additional percentage, which shall be determined under subparagraph (B) and shall apply as provided in subparagraph (C). Any amount so increased that is not a multiple of $0.10 shall be decreased to the next lower multiple of $0.10.

(B) The applicable additional percentage by which the amounts described in subdivisions (I), (II), and (III) of paragraph (2)(A)(ii) are to be further increased under subparagraph (A) in the subsequent calendar year involved shall be the amount derived by—

(i) subtracting (I) the compounded percentage benefit increases that were actually paid under paragraph (2) and this paragraph from (II) the compounded percentage benefit increases that would have been paid if all increases under paragraph (2) had been made on the basis of the CPI increase percentage,

(ii) dividing the difference by the sum of the compounded percentage in clause (i)(I) and 100 percent, and

(iii) multiplying such quotient by 100 so as to yield such applicable additional percentage (which shall be rounded to the nearest one-tenth of 1 percent),

with the compounded increases referred to in clause (i) being measured—

(Iv) in the case of amounts described in subdivision (I) of paragraph (2)(A)(ii), over the period beginning with the calendar year in which monthly benefits described in such subdivision were first increased on the basis of the wage increase percentage and ending with the year before such subsequent calendar year, and

(v) in the case of amounts described in subdivisions (II) and (III) of paragraph (2)(A)(ii), over the period beginning with the calendar year in which the individual whose primary insurance amount is increased under such subdivision (II) became eligible (as defined in subsection (a)(3)(B) of this section) for the old-age or disability insurance benefit that is being increased under this subsection, or died before becoming so eligible, and ending with the year before such subsequent calendar year;

except that if the Secretary determines in any case that the application (in accordance with subparagraph (C)) of the additional percentage as computed under the preceding provisions of this subparagraph would cause the OASDI fund ratio to fall below 32.0 percent in the calendar year immediately following such subsequent year, he shall reduce such applicable additional percentage to the extent necessary to ensure that the OASDI fund ratio will remain at or above 32.0 percent through the end of such following year.

(C) Any applicable additional percentage increase in an amount described in subdivision (I), (II), or (III) of paragraph (2)(A)(ii), made under this paragraph in any calendar year, shall thereafter be treated for all the purposes of this chapter as a part of the increase made in such amount under paragraph (2) for that year.

(Aug. 14, 1935, ch. 531, title II, § 215, as added Aug. 28, 1950, ch. 809, title I, § 104(a), 64 Stat. 492, 506, and amended July 18, 1952, ch. 945, §§ 2(a), (b)(1), 3(c), 6(a), (b), 66 Stat. 767, 768, 770, 771, 776; Sept. 1, 1954, ch. 1206, title I, §§ 102(a)-(d), (e)(1)-(4), 104(d), 106(c), 68 Stat. 1062-1068, 1078, 1079; Aug. 1, 1956, ch. 836, title I, §§ 103(c)(4), (5), 109(a), 115(a)-(c), 70 Stat. 818, 830, 832, 833; Aug. 28, 1958, Pub. L. 85-840, title I, §§ 101(a)-(d), 102(d), title II, § 205(m), 72 Stat. 1013-1016, 1020, 1025; Apr. 8, 1960, Pub. L. 86-415, § 7, 74 Stat. 35; Sept. 13, 1960, Pub. L. 86-778, title I, § 103(j)(2)(C), title II, § 211(n), title III, §§ 303(a)-(e), 304(a), 74 Stat. 937, 958, 960-962, 966; June 30, 1961, Pub. L. 87-64, title I, §§ 101(a), 102(d), 75 Stat. 131, 135; July 30, 1965, Pub. L. 89-97, title III, §§ 301(a), (b), 302(a)-(d), 303(e), 304(k), 320(a)(4), 79 Stat. 361, 363-365, 367, 370, 393; Jan. 2, 1968, Pub. L. 90-248, title I, §§ 101(a), (c), (d), 108(a)(4), 155(a)(1)-(6), title IV, § 403(b), 81 Stat. 824, 827, 834, 864, 865, 931; Dec. 30, 1969, Pub. L. 91-172, title X, § 1002(a), (c), (d), 83 Stat. 737, 740; Mar. 17, 1971, Pub. L. 92-5, title II, §§ 201(a), (c), (d), 203(a)(4), 85 Stat. 6, 9, 10; July 1, 1972, Pub. L. 92-336, title II, §§ 201(a), (c)-(f), 202(a)(1), (3), 203(a)(4), 86 Stat. 406, 410-412, 416, 418; Oct. 30, 1972, Pub. L. 92-603, title I, §§ 101(a), (c)-(e), 104(b), 134, 142(b), (c), 144(a)(1), 86 Stat. 1333, 1334, 1340, 1362, 1368, 1369; July 9, 1973, Pub. L. 93-66, title II, § 203(a)(4), 87 Stat. 153; Dec. 31, 1973, Pub. L. 93-233, §§ 1(h)(1), 2(a), 3(a)-(h), 5(a)(4), 87 Stat. 948, 952, 953; Dec. 20, 1977, Pub. L. 95-216, title I, § 103(d), title II, § 201, 91 Stat. 1514, 1519; June 9, 1980, Pub. L. 96-265, title I, §§ 101(b)(3), (4), 102(a), 94 Stat. 442, 443; Oct. 19, 1980, Pub. L. 96-473, § 6(d), 94 Stat. 2265; Aug. 13, 1981, Pub. L. 97-35, title XXII, §§ 2201(a), (b)(1)-(9), (c)(1)-(5), 2206(a), (b)(5)-(7), 95 Stat. 830, 831, 838; Dec. 29, 1981, Pub. L. 97-123, § 2(a)-(d), 95 Stat. 1660; Apr. 20, 1983, Pub. L. 98-21, title I, §§ 111(a)(1)-(3), (6), (b)(1), (2), (c), 112(a)-(d), 113(a)-(c), title II, § 201(c)(1)(C), 97 Stat. 72-76, 78, 109; July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2661(k), 2663(a)(10), 98 Stat. 1157, 1164; Apr. 7, 1986, Pub. L. 99-272, title XII, § 12105, 100 Stat. 286; Oct. 21, 1986, Pub. L. 99-509, title IX, § 9001(a), (b), 100 Stat. 1969, 1970; Oct. 22, 1986, Pub. L. 99-514, § 2, title XVIII, § 1883(a)(7), 100 Stat. 2095, 2916.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1937, referred to in subsecs. (a)(1)(C)(ii), (7)(A) and (d)(1)(C), (5), is act Aug. 29, 1935, ch. 812, 49 Stat. 867, as amended generally. See par. for Railroad Retirement Act of 1974 below.

The Railroad Retirement Act of 1974, referred to in subsecs. (a)(1)(C)(ii), (7)(A), (d)(5), is title I of Pub. L. 93-445, Oct. 16, 1974, 88 Stat. 1305, and is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. Such title I completely amended and revised the Railroad Retirement Act of 1937 (approved June 24, 1937, ch. 382, 50 Stat. 307), and as thus amended and revised, the 1937 Act was redesignated the Railroad Retirement Act of 1974. Previously, the 1937 Act had completely amended and revised the Railroad Retirement Act of 1935 (approved Aug. 29, 1935, ch. 812, 49 Stat. 967). Section 201 of the 1937

Act provided that the 1935 Act, as in force prior to amendment by the 1937 Act, may be cited as the Railroad Retirement Act of 1935; and that the 1935 Act, as amended by the 1937 Act may be cited as the Railroad Retirement Act of 1937. The Railroad Retirement Acts of 1935 and 1937 were classified to subchapter II (§ 215 et seq.) and subchapter III (§ 228a et seq.), respectively, of chapter 9 of Title 45.

Section 101 of the Social Security Amendments of 1983, referred to in subsec. (a)(7)(E)(i), is section 101 of Pub. L. 98-21, title I, Apr. 20, 1983, 97 Stat. 67, which amended sections 409 and 410 of this title and section 3121 of Title 26, Internal Revenue Code, and enacted provisions set out as notes under section 410 of this title and section 3121 of Title 26.

Section 3121(k) of the Internal Revenue Code of 1986, referred to in subsec. (a)(7)(E)(ii), is classified to section 3121(k) of Title 26.

Section 102 of that Act, referred to in subsec. (a)(7)(E)(ii), is section 102 of Pub. L. 98-21, title I, Apr. 20, 1983, 97 Stat. 70, which amended section 410 of this title and section 3121 of Title 26 and enacted provisions set out as notes under section 414 of this title and section 3121 of Title 26.

Sections 111(a)(6), 111(b)(2), and 112 of the Social Security Amendments of 1983, referred to in subsec. (i)(4), are sections 111(a)(6), 111(b)(2), and 112 of Pub. L. 98-21, title I, Apr. 20, 1983, 97 Stat. 72, 73, which amended subsec. (i) of this section and enacted provisions set out as notes below. See 1983 Amendment notes below.

Section 9001 of the Omnibus Budget Reconciliation Act of 1986, referred to in subsec. (i)(4), is section 9001 of Pub. L. 99-509, title IX, Oct. 21, 1986, 100 Stat. 1969, which amended sections 415 and 1395r of this title and enacted provisions set out as a note below.

AMENDMENTS

1966—Subsec. (a)(7)(E)(ii). Pub. L. 99-514, § 2, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (i)(1)(B). Pub. L. 99-509, § 9001(a), substituted "percentage is greater than zero" for "percentage is 3 percent or more".

Pub. L. 99-509, § 9001(b)(2)(A), amended subpar. (B), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by striking out ", by not less than 3 per centum," after "Department of Labor exceeds".

Subsec. (i)(2)(C)(i). Pub. L. 99-509, § 9001(b)(1)(A)(i), redesignated cl. (ii) as (i) and struck out former cl. (i) which read as follows: "Whenever the level of the Consumer Price Index as published for any month exceeds by 2.5 percent or more the level of such index for the most recent base quarter (as defined in paragraph (1)(A)(ii)) or, if later, the most recent cost-of-living computation quarter, the Secretary shall (within 5 days after such publication) report the amount of such excess to the House Committee on Ways and Means and the Senate Committee on Finance."

Pub. L. 99-509, § 9001(b)(2)(B), amended subpar. (C), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by striking out cl. (i) which read as follows: "Whenever the level of the Consumer Price Index as published for any month exceeds by 2.5 percent or more the level of such index for the most recent base quarter (as defined in paragraph (I)(A)(ii)) or, if later, the most recent cost-of-living computation quarter, the Secretary shall (within 5 days after such publication) report the amount of such excess to the House Committee on Ways and Means and the Senate Committee on Finance."

Subsec. (i)(2)(C)(ii). Pub. L. 99-509, § 9001(b)(1)(A), redesignated cl. (iii) as (ii) and substituted "under clause (i)" for "under clause (ii)". Former cl. (ii) redesignated (i).

Pub. L. 99-509, § 9001(b)(2)(B), amended subpar. (C), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by striking out cl. (ii) designation.

Subsec. (i)(2)(C)(iii). Pub. L. 99-509, § 9001(b)(1)(A)(i), redesignated cl. (iii) as (ii).

Subsec. (i)(4). Pub. L. 99-509, § 9001(b)(1)(B), inserted "and by section 9001 of the Omnibus Budget Reconciliation Act of 1986".

Pub. L. 99-272 substituted "the Secretary shall revise the table of benefits contained in subsection (a) of this section, as in effect in December 1978, in accordance with the requirements of paragraph (2)(D) of this subsection as then in effect, except that the requirement in such paragraph (2)(D) that the Secretary publish such revision of the table of benefits in the Federal Register shall not apply" for "the Secretary shall publish in the Federal Register revisions of the table of benefits contained in subsection (a) of this section, as in effect in December 1978, as required by paragraph (2)(D) of this subsection as then in effect".

Subsec. (i)(5)(A)(i). Pub. L. 99-509, § 9001(b)(1)(C), substituted "because there was no wage increase percentage greater than zero" for "because the wage increase percentage was less than 3 percent".

Subsec. (i)(5)(B). Pub. L. 99-514, § 1883(a)(7), substituted "clause (i)(I)" for "subdivision (I)" in cl. (ii) and "clause (i)" for "subdivisions (I) and (II)" in provisions between cls. (iii) and (iv).

1984—Subsec. (a)(1)(B)(i). Pub. L. 98-369, § 2663(a)(10)(A)(i), substituted "for such benefits" for "of such benefits".

Subsec. (a)(I)(B)(iii). Pub. L. 98-369, § 2663(a)(10)(A)(ii), substituted "amount" for "amounts" after "except that any".

Subsec. (a)(1)(C)(ii). Pub. L. 98-369, § 2663(a)(10)(A)(iii), substituted "section 217" for "scetion 217" after "deemed to be paid to such individual under".

Subsec. (a)(4)(B). Pub. L. 98-369, § 2663(a)(10)(B), realigned margins of subpar. (B).

Subsec. (a)(7)(B)(ii)(I). Pub. L. 98-369, § 2661(k)(1), substituted "who become eligible (as defined in paragraph (3)(B)) for old-age insurance benefits (or became eligible as so defined for disahility insurance benefits before attaining age 62)" for "who initially become eligible for old-age or disability insurance benefits".

Subsec. (a)(7)(C)(ii). Pub. L. 98-369, § 2661(k)(2), substituted "survivor's" for "survivors".

Subsec. (f)(2)(A). Pub. L. 98-369, § 2663(a)(10)(C), substituted "primary insurance amount" for "primary insurance account".

Subsec. (f)(9)(B)(i). Pub. L. 98-369, § 2661(k)(3), substituted "as though the recomputed primary insurance amount were being computed under subsection (a)(7) or (d)(5)" for "as though such primary insurance amount had initially been computed without regard to subsection (a)(7) or (d)(5)".

Subsec. (h)(1). Pub. L. 98-369, § 2663(a)(10)(D)(ii), substituted "Director of the Office of Personnel Management" for "Civil Service Commission".

Subsec. (i)(5)(A). Pub. L. 98-369, § 2661(k)(4), inserted provision that any amount so increased that is not a multiple of $0.10 shall be decreased to the next lower multiple of $0.10.

Subsec. (i)(5)(B)(iii). Pub. L. 98-369, § 2661(k)(5)(A), substituted "so as to yield such applicable additional percentage (which shall be rounded to the nearest one-tenth of 1 percent)" for "and rounding to the nearest one-tenth of 1 percent".

Subsec. (i)(5)(B)(iv), (v). Pub. L. 98-369, § 2661(k)(5)(B), (C), substituted "ending with the year before such subsequent calendar year" for "ending with such subsequent calendar year" in cls. (iv) and (v) and "became eligible (as defined in subsection (a)(3)(B) of this section) for the old-age or disability insurance benefit that is being increased under this

subsection" for "initially became eligible for an old-age or disability insurance benefit" in cl. (v).

1983—Subsec. (a)(7). Pub. L. 98-21, § 113(a), added par. (7).

Subsec. (d)(5). Pub. L. 98-21, § 113(b), added par. (5).

Subsec. (f)(5). Pub. L. 98-21, § 201(c)(1)(C), substituted "retirement age (as defined in section 416(*l*) of this title)" for "age 65".

Subsec.(f)(9). Pub. L.98-21, § 113(c), added par. (9).

Subsec. (i)(1)(A). Pub. L. 98-21, § 111(b)(1), substituted "September 30" for "March 31" and "1982" for "1974".

Pub. L. 98-21, § 111(b)(2), amended subpar. (A), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by substituting "September 30" for "March 31" and "1982" for "1974".

Subsec. (i)(1)(B). Pub. L. 98-21, § 112(a)(1), substituted "with respect to which the applicable increase percentage is 3 percent or more" for "in which the Consumer Price Index prepared by the Department of Labor exceeds, by not less than 3 per centum, such Index in the later of (i) the last prior cost-of-living computation quarter which was established under this subparagraph, or (ii) the most recent calendar quarter in which occurred the effective month of a general benefit increase under this subchapter".

Subsec. (i)(1)(C) to (H). Pub. L. 98-21, § 112(a)(3), (4), added subpars. (C) to (G) and redesignated former subpar. (C) as (H).

Subsec. (i)(2)(A)(ii). Pub. L. 98-21, § 112(b), in provisions immediately following subcl. (iii), substituted "by the applicable increase percentage" for "by the same percentage (rounded to the nearest one-tenth of 1 percent) as the percentage by which the Consumer Price Index for that cost-of-living computation quarter exceeds such Index for the most recent prior calendar quarter which was a base quarter under paragraph (1)(A)(ii) or, if later, the most recent cost-of-living computation quarter under paragraph (1)(B)".

Pub. L. 98-21, § 111(a)(1), substituted "December" for "June" in provisions preceding subcl. (I).

Pub. L. 98-21, § 111(a)(6), amended par. (2), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by substituting in the provisions preceding subpar. (A)(ii)(I) "December" for "June".

Subsec. (i)(2)(A)(iii). Pub. L. 98-21, § 111(a)(2), substituted "November" for "May".

Subsec. (i)(2)(B). Pub. L. 98-21, § 111(a)(3), substituted "November" for "May" in two places.

Pub. L. 98-21, § 111(a)(6), amended par. (2), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by substituting in subpar. (B) "November" for "May" in two places.

Subsec. (i)(2)(C)(iii). Pub. L. 98-21, § 112(d)(1), added cl. (iii).

Subsec. (i)(4). Pub. L. 98-21, § 112(d)(2), inserted reference to amendments made by section 112 of the Social Security Amendments of 1983.

Pub. L. 98-21, § 111(c), inserted reference to amendments made by section 111(a)(6) and 111(b)(2) of the Social Security Amendments of 1983.

Subsec. (i)(5). Pub. L. 98-21, § 112(c), added par. (5).

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1883(a)(7) of Pub. L. 99-514 effective Oct. 22, 1966, see section 1883(f) of Pub. L. 99-514, set out as a note under section 402 of this title.

Section 9001(d) of Pub. L. 99-509 provided that:

"(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [amending sections 415 and 1395r of this title] shall apply with respect to cost-of-living increases determined under section 215(i) of the Social Security Act [subsec. (i) of this section] (as currently in effect, and as in effect in December 1978 and applied in certain cases under the provisions of such Act [this chapter] in effect after December 1978) in 1986 and subsequent years.

"(2) The amendments made by paragraphs (1)(A) and (2)(B) of subsection (b) [amending this section] shall apply with respect to months after September 1986.

"(3) The amendment made by subsection (c) [amending section 1395r of this title] shall apply with respect to monthly premiums (under section 1839 of the Social Security Act [section 1395r of this title]) for months after December 1986."

Section 12115 of Pub. L. 99-272 provided that: "Except as otherwise specifically provided, the preceding provisions of this subtitle [subtitle A, §§ 12101 to 12115 of title XII of Pub. L. 99-272, amending sections 402 to 404, 409, 415, 418, 423, 424a, 907, 909, 910, 1310, and 1383 of this title and sections 86, 871, 932, and 3121 of Title 26, Internal Revenue Code, enacting provisions set out as notes under sections 402 to 404, 409, 418, 424a, 907, and 909 of this title and section 932 of Title 26, amending provisions set out as notes under section 1310 of this title, and repealing provisions set out as a note under section 907 of this title], including the amendments made thereby, shall take effect on the first day of the month following the month in which this Act is enacted [April 1986]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2661 of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2664(a) of Pub. L. 98-369, set out as a note under section 401 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 111(a) of Pub. L. 98-21 applicable with respect to cost-of-living increases determined under subsec. (i) of this section for years after 1982, see section 111(a)(8) of Pub. L. 98-21, set out as a note under section 402 of this title.

Section 111(b)(3) of Pub. L. 98-21 provided that: "The amendments made by this subsection [amending subsec. (i)(1)(A) of this section shall apply with respect to cost-of-living increases determined under section 2151(i) of the Social Security Act [subsec. (i) of this section] for years after 1983."

Section 112(e) of Pub. L. 98-21 provided that: "The amendments made by the preceding provisions of this section [amending subsec. (i) of this section] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1983."

COST-OF-LIVING INCREASES; COST-OF-LIVING COMPUTATION QUARTER DETERMINATIONS

Pub. L. 98-604, § 1, Oct. 30, 1984, 98 Stat. 3161, provided:

"That (a) in determining whether the base quarter ending on September 30, 1984, is a cost-of-living computation quarter for the purposes of the cost-of-living increases under sections 215(i) and 1617 of the Social Security Act [42 U.S.C. 415(i) and 1382f], the phrase 'is 3 percent or more' appearing in section 215(i)(1)(B) of such Act shall be deemed to read 'is greater than zero' (and the phrase 'exceeds, by not less than 3 per centum, such Index' appearing in section 215(i)(1)(B) of such Act as in effect in December 1978 shall be deemed to read 'exceeds such Index').

"(b) For purposes of section 215(i) of such Act [42 U.S.C. 415(i)], the provisions of subsection (a) shall not constitute a 'general benefit increase'."

"BASE QUARTER" IN CALENDAR YEAR 1983

Section 111(d) of Pub. L. 98-21 provided that: "Notwithstanding any provision to the contrary in section 215(i) of the Social Security Act [subsec. (i) of this section], the 'base quarter' (as defined in paragraph (1)(A)(i) of such section) in the calendar year 1983 shall be a 'cost-of-living computation quarter' within the meaning of paragraph (1)(B) of such section (and shall be deemed to have been determined by the Secretary of Health and Human Services to be a 'cost-of-living computation quarter' under paragraph (2)(A) of such section) for all of the purposes of such Act [this chapter] as amended by this section and by other provisions of this Act, without regard to the extent by which the Consumer Price Index has increased since the last prior cost-of-living computation quarter which was established under such paragraph (1)(B)."

COMBINED BALANCE IN TRUST FUNDS USED IN DETERMINING OASDI FUND RATIO WITH RESPECT TO CALENDAR YEAR 1984

Section 112(f) of Pub. L. 98-21, as amended by Pub. L. 98-369, div. B, title VI, § 2662(b), July 18, 1984, 98 Stat. 1159, provided that: "Notwithstanding anything to the contrary in section 215(i)(1)(F) of the Social Security Act [subsec. (i)(1)(F) of this section] (as added by subsection (a)(4) of this section), the combined balance in the Trust Funds which is to be used in determining the 'OASDI fund ratio' with respect to the calendar year 1984 under such section shall be the estimated combined balance in such Funds as of the close of that year (rather than as of its beginning), including the taxes transferred under section 201(a) of such Act [42 U.S.C. 401(a)] on the first day of the year following that year."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 402, 403, 413, 417, 423, 424a, 427, 428, 430, 431, 674, 909, 1382f, 1382g, 1383c, 1395r of this title; title 5 sections 8349, 8421, 8442; title 26 section 415; title 38 section 3112; title 45 sections 231b, 231c.

§ 416. Additional definitions

For the purposes of this subchapter—

(a) Spouse; surviving spouse

(1) The term "spouse" means a wife as defined in subsection (b) of this section or a husband as defined in subsection (f) of this section.

(2) The term "surviving spouse" means a widow as defined in subsection (c) of this section or a widower as defined in subsection (g) of this section.

[*See main edition for text of (b) and (c)*]

(d) Divorced spouses; divorce

[*See main edition for text of (1) to (3)*]

(4) The term "divorced husband" means a man divorced from an individual, but only if he had been married to such individual for a period of 10 years immediately before the date the divorce became effective.

(5) The term "surviving divorced husband" means a man divorced from an individual who has died, but only if he had been married to the individual for a period of 10 years immediately before the divorce became effective.

(6) The term "surviving divorced father" means a man divorced from an individual who has died, but only if (A) he is the father of her son or daughter, (B) he legally adopted her son or daughter while he was married to her and while such son or daughter was under the age of 18, (C) she legally adopted his son or daughter while he was married to her and while such son or daughter was under the age of 18, or (D) he was married to her at the time both of them legally adopted a child under the age of 18.

(7) The term "surviving divorced parent" means a surviving divorced mother as defined in paragraph (3) of this subsection or a surviving divorced father as defined in paragraph (6).

(8) The terms "divorce" and "divorced" refer to a divorce a vinculo matrimonii.

[*See main edition for text of (e)*]

(f) Husband

The term "husband" means the husband of an individual, but only if (1) he is the father of her son or daughter, (2) he was married to her for a period of not less than one year immediately preceding the day on which his application is filed, or (3) in the month prior to the month of his marriage to her (A) he was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (c), (f) or (h) of section 402 of this title, (B) he had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 402(s) of this title), or (C) he was entitled to, or upon application therefor and attainment of the required age (if any) he would have been entitled to, a widower's, child's (after attainment of age 18), or parent's insurance annuity under section 231a of title 45. For purposes of clause (2), a husband shall be deemed to have been married to an individual for a period of one year throughout the month in which occurs the first anniversary of his marriage to her. For purposes of subparagraph (C) of section 402(c)(1) of this title, a divorced husband shall be deemed not to be married throughout the month which he becomes divorced.

(g) Widower

The term "widower" (except when used in the first sentence of section 402(i) of this title) means the surviving husband of an individual, but only if (1) he is the father of her son or daughter, (2) he legally adopted her son or daughter while he was married to her and while such son or daughter was under the age of eighteen, (3) she legally adopted his son or daughter while he was married to her and while such son or daughter was under the age of eighteen, (4) he was married to her at the time both of them legally adopted a child under the age of eighteen, (5) he was married to her for a period of not less than nine months immediately prior to the day on which she died, or (6) in the month before the month of his marriage to her (A) he was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (c), (f) or (h) of section 402 of this title, (B) he had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject,

however, to section 402(s) of this title), or (C) he was entitled to, or on application therefor and attainment of the required age (if any) he would have been entitled to, a widower's, child's (after attainment of age 18), or parent's insurance annuity under section 231a of title 45.

(h) Determination of family status

[*See main edition for text of (1) and (2)*]

(3) An applicant who is the son or daughter of a fully or currently insured individual, but who is not (and is not deemed to be) the child of such insured individual under paragraph (2) of this subsection, shall nevertheless be deemed to be the child of such insured individual if:

(A) in the case of an insured individual entitled to old-age insurance benefits (who was not, in the month preceding such entitlement, entitled to disability insurance benefits)—

(i) such insured individual—

(I) has acknowledged in writing that the applicant is his or her son or daughter,

(II) has been decreed by a court to be the mother or father of the applicant, or

(III) has been ordered by a court to contribute to the support of the applicant because the applicant is his or her son or daughter,

and such acknowledgment, court decree, or court order was made not less than one year before such insured individual became entitled to old-age insurance benefits or attained retirement age (as defined in subsection (*l*) of this section), whichever is earlier; or

(ii) such insured individual is shown by evidence satisfactory to the Secretary to be the mother or father of the applicant and was living with or contributing to the support of the applicant at the time such applicant's application for benefits was filed;

(B) in the case of an insured individual entitled to disability insurance benefits, or who was entitled to such benefits in the month preceding the first month for which he or she was entitled to old-age insurance benefits—

(i) such insured individual—

(I) has acknowledged in writing that the applicant is his or her son or daughter,

(II) has been decreed by a court to be the mother or father of the applicant, or

(III) has been ordered by a court to contribute to the support of the applicant because the applicant is his or her son or daughter,

and such acknowledgment, court decree, or court order was made before such insured individual's most recent period of disability began; or

(ii) such insured individual is shown by evidence satisfactory to the Secretary to be the mother or father of the applicant and was living with or contributing to the support of that applicant at the time such applicant's application for benefits was filed;

(C) in the case of a deceased individual—

(i) such insured individual—

(I) had acknowledged in writing that the applicant is his or her son or daughter,

(II) had been decreed by a court to be the mother or father of the applicant, or

(III) had been ordered by a court to contribute to the support of the applicant because the applicant was his or her son or daughter,

and such acknowledgment, court decree, or court order was made before the death of such insured individual, or

(ii) such insured individual is shown by evidence satisfactory to the Secretary to have been the mother or father of the applicant, and such insured individual was living with or contributing to the support of the applicant at the time such insured individual died.

For purposes of subparagraphs (A)(i) and (B)(i), an acknowledgement, court decree, or court order shall be deemed to have occurred on the first day of the month in which it actually occurred.

(i) Disability; period of disability

(1) Except for purposes of sections 402(d), 402(e), 402(f), 423, and 425 of this title, the term "disability" means (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months, or (B) blindness; and the term "blindness" means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less. The provisions of paragraphs (2)(A), (2)(C), (3), (4), (5), and (6) of section 423(d) of this title shall be applied for purposes of determinmg whether an individual is under a disability within the meaning of the first sentence of this paragraph in the same manner as they are applied for purposes of paragraph (1) of such section. Nothing in this subchapter shall be construed as authorizing the Secretary or any other officer or employee of the United States to interfere in any way with the practice of medicine or with relationships between practitioners of medicine and their patients, or to exercise any supervision or control over the administration or operation of any hospital.

(2) [*See main edition for text of (A)*]

(B) No period of disability shall begin as to any individual unless such individual files an application for a disability determination with respect to such period; and no such period shall begin as to any individual after such individual attains retirement age (as defined in subsection (*l*) of this section). In the case of a deceased individual, the requirement of an application under the preceding sentence may be satisfied by an application for a disability determination

filed with respect to such individual within 3 months after the month in which he died.

[*See main edition for text of (C)*]

(D) A period of disability shall end with the close of whichever of the following months is the earlier: (i) the month preceding the month in which the individual attains retirement age (as defined in subsection (*l*) of this section), or (ii) the month preceding (I) the termination month (as defined in section 423(a)(1) of this title), or, if earlier (II) the first month for which no benefit is payable by reason of section 423(e) of this title, where no benefit is payable for any of the succeeding months during the 15-month period referred to in such section. The provisions set forth in section 423(f) of this title with respect to determinations of whether entitlement to benefits under this subchapter or subchapter XVIII of this chapter based on the disability of any individual is terminated (on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling) shall apply in the same manner and to the same extent with respect to determinations of whether a period of disability has ended (on the basis of a finding that the physical or mental impairment on the basis of which the finding of disability was made has ceased, does not exist, *or* is not disabling).

[*See main edition for text of (E)*]

(F) An application for a disability determination which is filed more than 12 months after the month prescribed by subparagraph (D) as the month in which the period of disability ends (determined without regard to subparagraphs (B) and (E)) shall be accepted as an application for purposes of this paragraph if—

[*See main edition for text of (i)*]

(ii) in the case of an application filed by or on behalf of an individual with respect to a period of disability which ends in or before January 1968—

[*See main edition for text of (I) to (III)*]

In making a determination under this subsection, with respect to the disability or period of disability of any individual whose application for a determination thereof is accepted solely by reason of the provisions of this subparagraph (F), the provisions of this subsection (other than the provisions of this subparagraph) shall be applied as such provisions are in effect at the time such determination is made.

[*See main edition for text of (G)*]

(3) The requirements referred to in clauses (i) and (ii) of paragraph (2)(C) of this subsection are satisfied by an individual with respect to any quarter only if—

(A) he would have been a fully insured individual (as defined in section 414 of this title) had he attained age 62 and filed application for benefits under section 402(a) of this title on the first day of such quarter; and

(B)(i) he had not less than 20 quarters of coverage during the 40-quarter period which ends with such quarter, or

(ii) if such quarter ends before he attains (or would attain) age 31, not less than one-half (and not less than 6) of the quarters during the period ending with such quarter and beginning after he attained the age of 21 were quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter were quarters of coverage, or

(iii) in the case of an individual (not otherwise insured under clause (i)) who, by reason of clause (ii), had a prior period of disability that began during a period before the quarter in which he or she attained age 31, not less than one-half of the quarters beginning after such individual attained age 21 and ending with such quarter are quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter are quarters of coverage;

except that the provisions of subparagraph (B) of this paragraph shall not apply in the case of an individual who is blind (within the meaning of "blindness" as defined in paragraph (1)). For purposes of subparagraph (B) of this paragraph, when the number of quarters in any period is an odd number, such number shall be reduced by one, and a quarter shall not be counted as part of any period if any part of such quarter was included in a prior period of disability unless such quarter was a quarter of coverage.

(j) Periods of limitation ending on nonwork days

Where this subchapter, any provision of another law of the United States (other than the Internal Revenue Code of 1986) relating to or changing the effect of this subchapter, or any regulation issued by the Secretary pursuant thereto provides for a period within which an act is required to be done whicb affects eligibility for or the amount of any benefit or payment under this subchapter or is necessary to establish or protect any rights under this subchapter, and such period ends on a Saturday, Sunday, or legal holiday, or on any other day all or part of which is declared to be a nonwork day for Federal employees by statute or Executive order, then such act shall be considered as done within such period if it is done on the first day thereafter which is not a Saturday, Sunday, or legal holiday or any other day all or part of which is declared to be a nonwork day for Federal employees by statute or Executive order. For purposes of this subsection, the day on which a period ends shall include the day on which an extension of such period, as authorized by law or by the Secretary pursuant to law, ends. The provisions of this subsection shall not extend the period during which benefits under this subchapter may (pursuant to section 402(j)(1) or 423(b) of this title) be paid for months prior to the day application for such benefits is filed, or during which an application for benefits under this subchapter may (pursu-

ant to section 402(j)(2) or 423(b) of this title) be accepted as such.

[*See main edition for text of (k)*]

(*l*) Retirement age

(1) The term "retirement age" means—

(A) with respect to an individual who attains early retirement age (as defined in paragraph (2)) before January 1, 2000, 65 years of age;

(B) with respect to an individual who attains early retirement age after December 31, 1999, and before January 1, 2005, 65 years of age plus the number of months in the age increase factor (as determined under paragraph (3)) for the calendar year in which such individual attains early retirement age;

(C) with respect to an individual who attains early retirement age after December 31, 2004, and before January 1, 2017, 66 years of age;

(D) with respect to an individual who attains early retirement age after December 31, 2016, and before January 1, 2022, 66 years of age plus the number of months in the age increase factor (as determined under paragraph (3)) for the calendar year in which such individual attains early retirement age; and

(E) with respect to an individual who attains early retirement age after December 31, 2021, 67 years of age.

(2) The term "early retirement age" means age 62 in the case of an old-age, wife's, or husband's insurance benefit, and age 60 in the case of a widow's or widower's insurance benefit.

(3) The age increase factor for any individual who attains early retirement age in a calendar year within the period to which subparagraph (B) or (D) of paragraph (1) applies shall be determined as follows:

(A) With respect to an individual who attains early retirement age in the 5-year period consisting of the calendar years 2000 through 2004, the age increase factor shall be equal to two-twelfths of the number of months in the period beginning with January 2000 and ending with December of the year in which the individual attains early retirement age.

(B) With respect to an individual who attains early retirement age in the 5-year period consisting of the calendar years 2017 through 2021, the age increase factor shall be equal to two-twelfths of the number of months in the period beginning with January 2017 and ending with December of the year in which the individual attains early retirement age.

(Aug. 14, 1935, ch. 531, title II, § 216, as added Aug. 28, 1950, ch. 809, title I, § 104(a), 64 Stat. 492, 510, and amended July 18, 1952, ch. 945, § 3(d), 66 Stat. 771; Sept. 1, 1954, ch. 1206, title I, § 106(d), 68 Stat. 1080; Aug. 1, 1956, ch. 836, title I, §§ 102(a), (d)(12), 103(c)(6), 70 Stat. 809, 815, 818; July 17, 1957, Pub. L. 85-109, § 1, 71 Stat. 308; Aug. 30, 1957, Pub. L. 85-238, § 3(h), 71 Stat. 519; Aug. 28, 1958, Pub. L. 85-840, title II, §§ 201, 203, 204(a), title III, §§ 301(a)(2), (b)(2), (c)(2), (d), (e), 302(a), 305(b), 72 Stat. 1020, 1021, 1026-1028, 1030; Sept. 13, 1960, Pub. L. 86-778, title II, §§ 207(a)-(c), 208(a)-(c), title IV, §§ 402(e), 403(c), title VII, § 703, 74 Stat. 950-952, 968, 969, 994; June 30, 1961, Pub. L. 87-64, title I, §§ 102(b)(2)(D), (c)(1), (2)(B), (3)(C), 105, 75 Stat. 134, 135, 139; Oct. 13, 1964, Pub. L. 88-650, § 1(a)-(c), 78 Stat. 1075; July 30, 1965, Pub. L. 89-97, title III, §§ 303(a)(1), (b)(1), (2), 304(*l*), 306(c)(13), 308(c), (d)(2)(B), 328(b), 334(a)-(d), 339(a), 344(a), 79 Stat. 366, 367, 370, 373, 377, 378, 400, 404, 405, 409, 412; Jan. 2, 1968, Pub. L. 90-248, title I, §§ 104(d)(2), 105(a), 111(a), 150(a), 156(a)-(d), 158(d), 172(a), (b), 81 Stat. 832, 833, 837, 860, 866, 869, 877; Oct. 30, 1972, Pub. L. 92-603, title I, §§ 104(g), 113(a), 115(b), 116(d), 117(a), 118(b), 145(a), 86 Stat. 1341, 1347, 1349-1351, 1370; Oct. 16, 1974, Pub. L. 93-445, title III, § 304, 88 Stat. 1358; Dec. 20, 1977, Pub. L. 95-216, title III, § 337(a), 91 Stat. 1548; June 9, 1980, Pub. L. 96-265, title III, §§ 303(b)(2)(B), 306(b), 94 Stat. 453, 457; Oct. 19, 1980, Pub. L. 96-473, § 5(a)(2), 94 Stat. 2265; Aug. 13, 1981, Pub. L. 97-35, title XXII, §§ 2202(a)(2), 2203(b)(2), (c)(2), (d)(3), (4), 95 Stat. 835-837; Apr. 20, 1983, Pub. L. 98-21, title II, § 201(a), (c)(1)(D), title III, §§ 301(c)(1), 303, 304(c), 306(c), 309(j), (k), 332(a), 333(a), 97 Stat. 107, 109, 111, 112, 114, 117, 129; July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2661(*l*), 2662(c)(1), 2663(a)(11), 98 Stat. 1158, 1159, 1164; Oct. 9, 1984, Pub. L. 98-460, §§ 2(b), 4(a)(2), 98 Stat. 1796, 1800; Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095.)

REFERENCES IN TEXT

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

AMENDMENTS

1986—Subsec. (j). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1984—Subsec. (f). Pub. L. 98-369, § 2661(*l*)(1), inserted provision that for purposes of subparagraph (C) of section 402(c)(1) of this title, a divorced husband shall be deemed not to be married throughout the month which he becomes divorced.

Subsec. (h)(3). Pub. L. 98-369, § 2663(a)(11)(A), made technical amendment to directory language of Pub. L. 97-35, § 2203(d)(4). See 1981 Amendment Noto below.

Subsec. (h)(3)(A)(i). Pub. L. 98-369, § 2661(*l*)(2), substituted "subsection (*l*) of this section" for "section 416(*l*) of this title".

Subsec. (l)(1). Pub. L. 98-460, § 4(a)(2), inserted "(2)(C)," after "(2)(A),".

Subsec. (l)(2)(B). Pub. L. 98-369, § 2661(*l*)(3), substitutod "subsection (*l*) of this section" for "section 416(*l*) of this title".

Pub. L. 98-369, § 2662(c)(1), made clarifying amendment to Pub. L. 98-21, § 201(c)(1)(D). See 1983 Amendment note below.

Subsec. (l)(2)(D). Pub. L. 98-460, § 2(b), inserted "The provisions set forth in section 423(f) of this title with respect to determinations of whether entitlement to benefits under this subchapter or subchapter XVIII of this chapter based on the disability of any individual is terminated (on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling) shall apply in the same manner and to the same extent with respect to determinations of whether a period of disability has ended (on the basis of a finding that the physical or mental impair-

ment on the basis of which the finding of disability was made has ceased, does not exist, or is not disabling)."

Pub. L. 98-369, § 2661(*l*)(3), substituted "subsection (*l*) of this section" for "section 416(*l*) of this title".

Subsec. (i)(2)(F)(ii). Pub. L. 98-369, § 2663(a)(11)(B), substituted a dash for a comma after "before January 1968" in provisions preceding subcl. (I).

1983—Subsec. (a). Pub. L. 98-21, § 304(c), added subsec. (a).

Subsec. (d)(4), (5). Pub. L. 98-21, § 301(c)(1), added pars. (4) and (5). Former par. (4) redesignated (6).

Subsec. (d)(6). Pub. L. 98-21, § 306(c), added par. (6) and redesignated former par. (6) as (8).

Pub. L. 98-21, § 301(c)(1), redesignated former par. (4) as (6).

Subsec. (d)(7). Pub. L. 98-21, § 306(c), added par. (7).

Subsec. (d)(8). Pub. L. 98-21, § 306(c), redesignated former par. (6) as (8).

Subsecs. (f)(3)(A), (g)(6)(A). Pub. L. 98-21, § 309(j), (k), inserted reference to subsec. (c) of section 402 of this title.

Subsec. (h)(3). Pub. L. 98-21, § 333(a), substituted "subparagraphs (A)(i) and (B)(i)" for "suhparagraph (A)(i)" in provisions following subpar. (C)(ii).

Subsec. (h)(3)(A)(i). Pub. L. 98-21, § 201(c)(1)(D), substituted "retirement age (as defined in subsection (*l*) of this section)" for "age 65".

Subsec. (h)(3)(A)(i)(I). Pub. L. 98-21, § 303(d)(1), substituted "his or her" for "his".

Subsec. (h)(3)(A)(i)(II). Pub. L. 98-21, § 303(a), inserted "mother or" before "father".

Subsec. (h)(3)(A)(i)(III). Pub. L. 98-21, § 303(d)(1), substituted "his or her" for "his".

Subsec. (h)(3)(A)(ii). Pub. L. 98-21, § 303(a), (b), inserted "mother or" before "father" and substituted "such applicant's application for benefits was filed" for "such insured individual became entitled to benefits or attained retirement age (as defined in subsection (*l*) of this section), whichever first occurred".

Pub. L. 98-21, § 201(c)(1)(D), substituted "retirement age (as defined in subsection (*l*) of this section)" for "age 65".

Subsec. (h)(3)(B). Pub. L. 98-21, § 303(d)(2), substituted "he or she" for "he" in provisions preceding cl. (i).

Subsec. (h)(3)(B)(i)(I). Pub. L. 98-21, § 303(d)(1), substituted "his or her" for "his".

Subsec. (h)(3)(B)(i)(II). Pub. L. 98-21, § 303(a), inserted "mother or" before "father".

Subsec. (h)(3)(B)(i)(III). Pub. L. 98-21, § 303(d)(1), substituted "his or her" for "his".

Subsec. (h)(3)(B)(ii). Pub. L. 98-21, § 303(c), substituted "such applicant's application for benefits was filed" for "such period of disability began".

Pub. L. 98-21, § 303(a), inserted "mother or" before "father".

Subsec. (h)(3)(C)(i)(I). Pub. L. 98-21, § 303(d)(1), substituted "his or her" for "his".

Subsec. (h)(3)(C)(i)(II). Puh. L. 98-21, § 303(a), inserted "mother or" before "father".

Subsec. (h)(3)(C)(i)(III). Pub. L. 98-21, § 303(d)(1), substituted "his or her" for "his".

Subsec. (h)(3)(C)(ii). Pub. L. 98-21, § 303(a), inserted "mother or" before "father".

Subsec. (i)(2)(B). Pub. L. 98-21, § 201(c)(1)(D), as amended by Pub. L. 98-369, § 2662(c)(1), substituted "retirement age (as defined in subsection (*l*) of this section)" for "the age of 65".

Subsec. (i)(2)(D). Pub. L. 98-21, § 201(c)(1)(D), substituted "retirement age (as defined in subsection (*l*) of this section)" for "age 65".

Subsec. (i)(3)(B)(iii). Pub. L. 98-21, § 332(a), added cl. (iii).

Subsec. (*l*). Pub. L. 98-21, § 201(a), added subsec. (*l*).

1981—Subsec. (h)(3). Pub. L. 97-35, § 2203(d)(4), as amended by Puh. L. 98-369, § 2663(a)(11)(A), inserted provision that for purposes of subpar. (A)(i), an acknowledgement, court decree, or court order be deemed to havc occurred on the first day of the month in which it actually occurred.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by section 2(b) of Pub. L. 98-460 applicable to determinations made by the Secretary on or after Oct. 9, 1984, with certain enumerated exceptions and qualifications, see section 2(d) of Pub. L. 98-460, set out as a note under section 423 of this title.

Amendment by section 4(a)(2) of Pub. L. 98-460 applicable with respect to determinations made on or after the first day of the first month beginning after 30 days after Oct. 9, 1984, see section 4(c) of Pub. L. 98-460, set out as a note under section 423 of this title.

Amendment by section 2661 of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2664(a) of Pub. L. 98-369, set out as a note under section 401 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2684(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by sections 301, 303, 304, 306, and 309 of Pub. L. 98-21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 98-21, set out as a note under section 402 of this title.

Section 332(c) of Pub. L. 98-21 provided that: "The amendments made by this section [amending sections 416 and 423 of this title] shall be effective with respect to applications for disability insurance benefits under section 223 of the Social Security Act [42 U.S.C. 423], and for disability determinations under section 216(i) of such Act [subsec. (i) of this section], filed after the date of the enactment of this Act [Apr. 20, 1983], except that no monthly benefits under title II of the Social Security Act [this subchapter] shall be payable or increased hy reason of the amendments made by this section for months hefore the month following the month of enactment of this Act."

Section 333(b) of Pub. L. 98-21 provided that: "The amendment made by subsection (a) [amending subsec. (h)(3) of this section] shall be effective on the date of the enactment of this Act [Apr. 20, 1983]."

RETROACTIVE BENEFITS

For provisions relating to entitlement to retroactive benefits under section 2 of Pub. L. 98-460 which amended subsec. (i)(2)(D) of this section, see section 2(f) of Pub. L. 98-460, set out as a note under section 423 of this title.

PROMULGATION OF REGULATIONS

For provisions requiring the Secretary of Health and Human Services to prescribe regulations necessary to implement amendment to subsec. (i)(2)(D) of this section by section 2(b) of Pub. L. 98-460 not later than 180 days after Oct. 9, 1984, see section 2(g) of Pub. L. 98-460, set out as a note under section 423 of this title.

STUDY OF EFFECT OF RAISING RETIREMENT AGE ON THOSE UNLIKELY TO BENEFIT FROM IMPROVEMENTS IN LONGEVITY

Section 201(d) of Pub. L. 98-21 provided that: "The Secretary shall conduct a comprehensive study and analysis of the implications of the changes made by this section [amending sections 402, 403, 415, 416, and 423 of this title] in retirement age in the case of those individuals (affected by such changes) who, because they are engaged in physically demanding employment or because they are unable to extend their working careers for health reasons, may not benefit from improvements in longevity. The Secretary shall submit to the Congress no later than January 1, 1986, a full report on the study and analysis. Such report

shall include any recommendations for legislative changes, including recommendations with respect to the provision of protection against the risks associated with early retirement due to health considerations, which the Secretary finds necessary or desirable as a result of the findings contained in this study."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 402, 403, 413, 414, 415, 417, 421, 422, 423, 428, 429, 431, 1382c, 1395ll of this title; title 5 sections 8311, 8452; title 26 section 415; title 30 section 992; title 45 sections 231a, 231b, 231c, 231d, 231e, 231q.

§ 417. Benefits for veterans

(a) Determination of benefits

[*See main edition for text of (1)*]

(2) Upon application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any World War II veteran, the Secretary shall make a decision without regard to clause (B) of paragraph (1) of this subsection unless he has been notified by some other agency or instrumentality of the United States that, on the basis of the military or naval service of such veteran during World War II, a benefit described in clause (B) of paragraph (1) of this subsection has been determined by such agency or instrumentality to be payable by it. If he has not been so notified, the Secretary shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (1) of this subsection is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Secretary, and the Secretary shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection.

(3) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on military or naval service during World War II shall, at the request of the Secretary, certify to him, with respect to any veteran, such information as the Secretary deems necessary to carry out his functions under paragraph (2) of this subsection.

(b) Determination of insurance status

[*See main edition for text of (1)*]

(2) Upon an application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any World War II veteran, the Secretary shall make a decision without regard to paragraph (1)(B) of this subsection unless he has been notified by the Veterans' Administration that pension or compensation is determined to be payable by the Veterans' Administration by reason of the death of such veteran. The Secretary shall thereupon report such decision to the Veterans' Administration. If the Veterans' Administration in any such case has made an adjudication or thereafter makes an adjudication that any pension or compensation is payable under any law administered by it, it shall notify the Secretary and the Secretary shall certify no further benefits for payment, or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection. Any payments theretofore certified by the Secretary on the basis of paragraph (1) of this subsection to any individual, not exceeding the amount of any accrued pension or compensation payable to him by the Veterans' Administration, shall (notwithstanding the provisions of section 3101 of title 38) be deemed to have been paid to him by such Administration on account of such accrued pension or compensation. No such payment certified by the Secretary, and no payment certified by him for any month prior to the first month for which any pension or compensation is paid by the Veterans' Administration shall be deemed by reason of this subsection to have been an erroneous payment.

[*See main edition for text of (c) and (d)*]

(e) Determination based on wages and self-employment

(1) For purposes of determining entitlement to and the amount of any monthly benefit or lump-sum death payment payable under this subchapter on the basis of wages and self-employment income of any veteran (as defined in paragraph (4) of this subsection), and for purposes of section 416(i)(3) of this title, such veteran shall be deemed to have been paid wages (in addition to the wages, if any, actually paid to him) of $160 in each month during any part of which he served in the active military or naval service of the United States on or after July 25, 1947, and prior to January 1, 1957. This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

[*See main edition for text of (A) and (B)*]

The provisions of clause (B) of this paragraph shall not apply in the case of any monthly benefit or lump-sum death payment under this subchapter if its application would reduce by $0.50 or less the primary insurance amount (as computed under section 415 of this title prior to any recomputation thereof pursuant to subsection (f) of section 415 of this title) of the individual on whose wages and self-employment income such benefit or payment is based. The provisions of clause (B) of this paragraph shall also not apply for purposes of section 416(i)(3) of this title. In the case of monthly benefits under this subchapter for months after December 1956 (and any lump-sum death payment under this subchapter with respect to a death occurring after December 1956) based on the wages and self-employment income of a veteran who performed service (as a member of a uniformed service) to which the provisions of section 410(*l*)(1) of this title are applicable, wages which would, but for the provisions of clause (B) of this paragraph, be deemed under this subsection to have been paid to such veteran with respect to his active military or naval service performed after December 1950 shall be deemed to have been paid to him with respect

to such service notwithstanding the provisions of such clause, but only if the benefits referred to in such clause which are based (in whole or in part) on such service are payable solely by the Army, Navy, Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey, National Oceanic and Atmospheric Administration Corps, or Public Health Service.

(2) Upon application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any veteran, the Secretary shall make a decision without regard to clause (B) of paragraph (1) of this subsection unless he has been notified by some other agency or instrumentality of the United States that, on the basis of the military or naval service of such veteran on or after July 25, 1947, and prior to January 1, 1957, a benefit described in clause (B) of paragraph (1) of this subsection has been determined by such agency or instrumentality to be payable by it. If he has not been so notified, the Secretary shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (1) of this subsection is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Secretary, and the Secretary shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection.

(3) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on military or naval service on or after July 25, 1947, and prior to January 1, 1957, shall, at the request of the Secretary, certify to him, with respect to any veteran, such information as the Secretary deems necessary to carry out his functions under paragraph (2) of this subsection.

[*See main edition for text of (4)*]

(f) Right to annuity; waiver

(1) In any case where a World War II veteran (as defined in subsection (d)(2) of this section) or a veteran (as defined in subsection (e)(4) of this section) has died or shall hereafter die, and his or her surviving spouse or child is entitled under subchapter III of chapter 83 of title 5 to an annuity in the computation of which his or her active military or naval service was included, clause (B) of subsection (a)(1) of this section or clause (B) of subsection (e)(1) of this section shall not operate (solely by reason of such annuity) to make such subsection inapplicable in the case of any monthly benefit under section 402 of this title which is based on his or her wages and self-employment income; except that no such surviving spouse or child shall be entitled under section 402 of this title to any monthly benefit in the computation of which such service is included by reason of this subsection (A) unless such surviving spouse or child after December 1956 waives his or her right to receive such annuity, or (B) for any month prior to the first month with respect to which the Director of the Office of Personnel Management certifies to the Secretary that (by reason of such waiver) no further annuity will be paid to such surviving spouse or child under such subchapter III on the basis of such veteran's military or civilian service. Any such waiver shall be irrevocable.

(2) Whenever a surviving spouse waives his or her right to receive such annuity such waiver shall constitute a waiver on his or her own behalf; a waiver by a legal guardian or guardians, or, in the absence of a legal guardian, the person (or persons) who has the child in his or her care, of the child's right to receive such annuity shall constitute a waiver on behalf of such child. Such a waiver with respect to an annuity based on a veteran's service shall be valid only if the surviving spouse and all children, or, if there is no surviving spouse, all the children, waive their rights to receive annuities under subchapter III of chapter 83 of title 5 based on such veteran's military or civilian service.

(g) Appropriation to trust funds

(1) Within thirty days after April 20, 1983, the Secretary shall determine the amount equal to the excess of—

(A) the actuarial present value as of April 20, 1983, of the past and future benefit payments from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund under this subchapter and subchaptor XVIII of this chapter, together with associated administrative costs, resulting from the operation of this section (other than this subsection) and section 410 of this title as in effect before the enactment of the Social Security Amendments of 1950, over

(B) any amounts previously transferred from the general fund of the Treasury to such Trust Funds pursuant to the provisions of this subsection as in effect immediately before Arpil 20, 1983.

Such actuarial present value shall be based on the relevant actuarial assumptions set forth in the report of the Board of Trustees of each such Trust Fund for 1983 under sections 401(c) and 1395i(b) of this title. Within thirty days after April 20, 1983, the Secretary of the Treasury shall transfer the amount determined under this paragraph with respect to each such Trust Fund to such Trust Fund from amounts in the general fund of the Treasury not otherwise appropriated.

(2) The Secretary shall revise the amount determined under paragraph (1) with respect to each such Trust Fund in 1985 and each fifth year thereafter, as determined appropriate by the Secretary from data which becomes available to him after the date of the determination under paragraph (1) on the basis of the amount of benefits and administrative expenses actually paid from such Trust Fund under this subchapter or subchapter XVIII of this chapter and the relevant actuarial assumptions set forth in the report of the Board of Trustees of such Trust Fund for such year under section 401(c) or 1395i(b) of this title. Within 30 days

after any such revision, the Secretary of the Treasury, to the extent provided in advance in appropriation Acts, shall transfer to such Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, or from such Trust Fund to the general fund of the Treasury, such amounts as the Secretary of the Treasury determines necessary to take into account such revision.

[*See main edition for text of (h)*]

(Aug. 14, 1935, ch. 531, title II, § 217, as added Aug. 28, 1950, ch. 809, title 1, § 105, 64 Stat. 512, and amended July 18, 1952, ch. 945, § 5(a), (d)(1), 66 Stat. 773, 775; Aug. 14, 1953, ch. 483, § 1, 67 Stat. 580; Sept. 1, 1954, ch. 1206, title I, § 106(e), 68 Stat. 1081; Aug. 9, 1955, ch. 685, § 1, 69 Stat. 621; Aug. 1, 1956, ch. 837, title IV, §§ 404(a), (b), 406, 70 Stat. 872, 875; Aug. 28, 1958, Pub. L. 85-840, title III, § 314(a), (b), 72 Stat. 1036, 1037; Sept. 2, 1958, Pub. L. 85-857, § 13(i)(2), 72 Stat. 1265; Sept. 13, 1960, Pub. L. 86-778, title I, § 103(j)(2)(C), 74 Stat. 937; July 30, 1965, Pub. L. 89-97, title III, § 322, 79 Stat. 396; Jan. 2, 1968, Pub. L. 90-248, title IV, § 403(c), 81 Stat. 932; Apr. 21, 1976, Pub. L. 94-273, §§ 2(23), 16, 90 Stat. 376, 379; Dec. 20, 1977, Pub. L. 95-216, title II, § 205(c), 91 Stat. 1529; Aug. 13, 1981, Pub. L. 97-35, title XXII, § 2201(c)(7), 95 Stat. 832; Dec. 29, 1981, Pub. L. 97-123, § 2(g), 95 Stat. 1661; Apr. 20, 1983, Pub. L. 98-21, title I, § 151(a), title III, § 308, 97 Stat. 103, 115; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(a)(12), (j)(3)(A)(ii), 98 Stat. 1164, 1170.)

REFERENCES IN TEXT

The Social Security Act Amendments of 1950, referred to in subsec. (g)(1)(A), is act Aug. 28, 1950, ch. 809, 64 Stat. 477, as amended. For complete classification of this Act to the Code, see Short Title of 1950 Amendment note set out under section 1305 of this title and Tables.

AMENDMENTS

1984—Subsecs. (a)(2), (3), (b)(2). Pub. L. 98-369, § 2663(j)(3)(A)(ii), struck out "of Health, Education, and Welfare" after "Secretary" wherever appearing.

Subsec. (d). Pub. L. 93-369, § 2663(a)(I2)(A), realigned margins of subsec. (d).

Subsec. (e)(1). Pub. L. 98-369, § 2663(a)(I2)(B), inserted reference to National Oceanic and Atmospheric Administration.

Subsec. (e)(2), (3). Pub. L. 98-369, § 2663(j)(3)(A)(ii), struck out "of Health, Education, and Welfare" after "Secretary" wherever appearing.

Subsec. (f)(1). Fub. L. 98-369, § 2663(a)(12)(C), substituted "Director of the Office of Pcrsonnel Management" for "Civil Service Commission".

Pub. L. 98-369, § 2663(j)(3)(A)(ii), struck out "of Health, Education, and Welfare" after "Secretary".

1983—Subsec. (f). Pub. L. 98-21, § 308(2), substituted "his or her" for "his" and "her" wherever appearing, except in cl. (A) of par. (1).

Pub. L. 98-21, § 308(1), substituted "surviving spouse" for "widow" wherever appearing.

Subsec. (g). Pub. L. 98-21, § I51(a), amended subsec. generally, substituting provisions relating to determination of amounts to be appropriated te trust funds and to revisions of such amounts for provisions which had formerly required that, in September of 1965, 1970, and 1975, and in October 1980 and in every fifth October thereafter up te and including October 2010, the Secretary determine the amount which, if paid in equal installments at the beginning of each fiscal year in the period beginning (A) with July 1, 1965, in the case of the first such determination, and (B) with the beginning of the first fiscal year commencing after the determination in the case of all other such determinations, and ending with the close of September 30, 2015, would accumulate, with interest compounded annually, to an amount equal to the amount needed to place each of the Trust Funds and the Federal Hospital Insurance Trust Fund in the same position at the close of September 30, 2015, as he estimated they would otherwise be in at the close of that date if section 410 of this title as in effect prior to the Social Security Act Amendments of 1950, and this section, had not been enacted, with the interest to he used in determining such amount to be the rate determined under section 401(d) of this title for public-debt obligations which were or could have been issued for purchase by the Trust Funds in the June preceding the September in which the determinations in 1965, 1970, and 1975 were made and in the September preceding the October in which all other determinations were made.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Fub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 308 of Pub. L. 98-21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 98-21, set out as a note under section 402 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 213, 405, 415 of this title; title 33 section 857; title 45 section 231b.

§ 418. Voluntary agreements for coverage of State and local employees

(a) Purpose of agreement

(1) The Secretary shall, at the request of any State, enter into an agreement with such State for the purpose of extending the insurance system established by this subchapter to services performed by individuals as employees of such State or any political subdivision thereof. Each such agreement shall contain such provisions, not inconsistent with the provisions of this section, as the State may request.

[*See main edition for text of (2); (b)*]

(c) Services covered

[*See main edition for text of (1) to (3)*]

(4) The Secretary shall, at the request of any State, modify the agreement with such State so as to (A) include any coverage group to which the agreement did not previously apply, or (B) include, in the case of any coverage group to which the agreement applies, services previously excluded from the agreement; but the agreement as so modified may not be inconsistent with the provisions of this section applicable in thc case of an original agreement with a State. A modification of an agreement pursuant to clause (B) of the preceding sentence may apply to individuals to whom paragraph (3)(B) of this subsection is applicable (whether or not the previous exclusion of the service of such indi-

viduals was pursuant to such paragraph), but only if such individuals are, on the effective date specified in such modification, ineligible to be members of any retirement system or if the modification with respect to such individuals is pursuant to subsection (d)(3) of this section.

[*See main edition for text of (5) to (8)*]

(d) Positions covered by retirement systems

[*See main edition for text of (1) and (2)*]

(3) Notwithstanding paragraph (1) of this subsection, an agreement with a State may be made applicable (either in the original agreement or by any modification thereof) to service performed by employees in positions covered by a retirement system (including positions specified in paragraph (4) of this subsection but not including positions excluded by or pursuant to paragraph (5)), if the governor of the State, or an official of the State designated by him for the purpose, certifies to the Secretary that the following conditions have been met:

[*See main edition for text of (A) to (E)*]

An employee shall be deemed an "eligible employee" for purposes of any referendum with respect to any retirement system if, at the time such referendum was held, he was in a position covered by such retirement system and was a member of such system, and if he was in such a position at the time notice of such referendum was given as required by clause (C) of the preceding sentence; except that he shall not be deemed an "eligible employce" if, at the time the referendum was held, he was in a position to which the Stato agreement already applied, or if he was in a position excluded by or pursuant to paragraph (5). No referendum with respect to a retirement system shall be valid for purposes of this paragraph unless held within the two-year period which ends on the date of execution of the agreement or modification which extends the insurance system established by this subchapter to such retirement system, nor shall any referendum with respect to a retirement system be valid for purposes of this paragraph if held less than one year after the last previous referendum held with respect to such retirement system.

[*See main edition for text of (4) and (5)*]

(6)(A) If a retirement system covers positions of employees of the State and positions of employees of one or more political subdivisions of the State, or covers positions of employees of two or more political subdivisions of the State, then, for purposes of the preceding paragraphs of this subsection, there shall, if the State so desires, be deemed to be a separate retirement system with respect to any one or mcre of the political subdivisions concerned and, where the retirement system covers positions of employees of the State, a separate retirement system with respect to the State or with respect to the State and any one or more of the political subdivisions concerned. Where a retirement system covering positions of employees of a State and positions of employees of one or more political subdivisions of the State, or covering positions of employees of two or more political subdivisions of the State, is not divided into separate retirement systems pursuant to the preceding sentence or pursuant to subparagraph (C), then the State may, for purposes of subsection (e) of this section only, deem the system to be a separate retirement system with respect to any one or more of the political subdivisions concerned and, where the retirement system covers positions of employees of the State, a separate retirement system with respect to the State or with respect to the State and any one or more of the political subdivisions concerned.

[*See main edition for text of (B) to (E)*]

(F) In the case of any retirement system divided pursuant to subparagraph (C), the position of any member of the division or part composed of positions of members who do not desire coverage may be transferred to the separate retirement system composed of positions of members who desire such coverage if it is so provided in a modification of such agreement which is mailed, or delivered by other means, to the Secretary prior to 1970 or, if later, the expiration of two years after the date on which such agreement, or the modification thereof making the agreement applicable to such separate retirement system, as the case may be, is agreed to, but only if, prior to such modification or such later modification, as the case may be, the individual occupying such position files with the State a written request for such transfer. Notwithstanding subsection (e)(1) of this section, any such modification or later modification, providing for the transfer of additional positions within a retirement system previously divided pursuant to subparagraph (C) to the separate retirement system composed of positions of members who desire coverage, shall be effective with respect to services performed after the same effective date as that which was specified in the case of such previous division.

[*See main edition for text of (G)*]

(7) The certification by the governor (or an official of the State designated by him for the purpose) required under paragraph (3) of this subsection shall be deemed to have been made, in thc case of a division or part (created under subparagraph (C) of paragraph (6) of this subsection or the corresponding provision of prior law) consisting of the positions of members of a retirement system who desire coverage under the agreement under this section, if the governor (or the official so designated) certifies to the Secretary that—

[*See main edition for text of (A) to (D)*]

For purposes of this paragraph, an individual in a position to which the State agreement already applied or in a position excluded by or pursuant to paragraph (5) of this subsection shall not be considered a member of the retirement system.

(8) [*See main edition for text of (A) to (C)*]

(D) Except in the case of agreements with the States named in subsection (*l*) of this section and agreements with interstate instrumental-

ities, nothing in this paragraph shall authorize the application of an agreement to service in any policeman's or fireman's position.

(e) Effective date of agreement; retroactive coverage

(1) Any agreement or modification of an agreement under this section shall be effective with respect to services performed after an effective date specified in such agreement or modification; except that such date may not be earlier than the last day of the sixth calendar year preceding the year in which such agreement or modification, as the case may be, is mailed or delivered by other means to the Secretary.

(2) In the case of service performed by members of any coverage group—

(A) to which an agreement under this section is made applicable, and

(B) with respect to which the agreement, or modification thereof making the agreement so applicable, specifies an effective date earlier than the date of execution of such agreement and such modification, respectively,

the agreement shall, if so requested by the State, be applicable to such services (to the extent the agreement was not already applicable) performed before such date of execution and after such effective date by any individual as a member of such coverage group if he is such a member on a date, specified by the State, which is earlier than such date of execution, except that in no case may the date so specified be earlier than the date such agreement or such modification, as the case may be, is mailed, or delivered by other means, to the Secretary.

(3) Notwithstanding the provisions of paragraph (2) of this subsection, in the case of services performed by individuals as members of any coverage group to which an agreement under this section is made applicable, and with respect to which there were timely paid in good faith to the Secretary of the Treasury amounts equivalent to the sum of the taxes which would have been imposed by sections 3101 and 3111 of the Internal Revenue Code of 1986 had such services constituted employment for purposes of chapter 21 of such Code at the time they were performed, and with respect to which refunds were not obtained, such individuals may, if so requested by the State, be deemed to be members of such coverage group on the date designated pursuant to paragraph (2).

(f) Duration of agreement

No agreement under this section may be terminated, either in its entirety or with respect to any coverage group, on or after April 20, 1983.

(g) Instrumentalities of two or more States

(1) The Secretary may, at the request of any instrumentality of two or more States, enter into an agreement with such instrumentality for the purpose of extending the insurance system established by this subchapter to services performed by individuals as employees of such instrumentality. Such agreement, to the extent practicable, shall be governed by the provisions of this section applicable in the case of an agreement with a State.

(2) In the case of any instrumentality of two or more States, if—

(A) employees of such instrumentality are in positions covered by a retirement system of such instrumentality or of any of such States or any of the political subdivisions thereof, and

(B) such retirement system is (on, before, or after August 30, 1957) divided into two divisions or parts, one of which is composed of positions of members of such system who are employees of such instrumentality and who desire coverage under an agreement under this section and the other of which is composed of positions of members of such system who are employees of such instrumentality and who do not desire such coverage, and

(C) it is provided that there shall be included in such division or part composed of the positions of members desiring such coverage the positions of employees of such instrumentality who become members of such system after such coverage is extended,

then such retirement system shall, if such instrumentality so desires, be deemed to be a separate retirement system with respect to each such division or part. An individual who is in a position covered by a retirement system divided pursuant to the preceding sentence and who is not a member of such system but is eligible to become a member thereof shall, for purposes of this subsection, be regarded as a member of such system. Coverage under the agreement of any such individual shall be provided under the same conditions, to the extent practicable, as are applicable in the case of the States to which the provisions of subsection (d)(6)(C) of this section apply. The position of any employee of any such instrumentality which is covered by any retirement system to which the first sentence of this paragraph is applicable shall, if such individual is ineligible to become a member of such system on August 30, 1957, or, if later, the day he first occupies such position, be deemed to be covered by the separate retirement system consisting of the positions of members of the division or part who do not desire coverage under the insurance system established under this subchapter. Services in positions covered by a separate retirement system created pursuant to this subsection (and consisting of the positions of members who desire coverage under an agreement under this section) shall be covered under such agreement on compliance, to the extent practicable, with the same conditions as are applicable to coverage under an agreement under this section of services in positions covered by a separate retirement system created pursuant to subparagraph (C) of subsection (d)(6) of this section or the corresponding provision of prior law (and consisting of the positions of members who desire coverage under such agreement).

(3) Any agreement with any instrumentality of two or more States entered into pursuant to this chapter may, notwithstanding the provisions of subsection (d)(5)(A) of this section and the references thereto in subsections (d)(1) and (d)(3) of this section, apply to service performed by employees of such instrumentality in any policeman's or fireman's position covered by a retirement system, but only upon

compliance, to the extent practicable, with the requirements of subsection (d)(3) of this section. For the purpose of the preceding sentence, a retirement system which covers positions of policemen or firemen or both, and other positions shall, if the instrumentality concerned so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

(h) Delegation of functions

The Secretary is authorized, pursuant to agreement with the head of any Federal agency, to delegate any of his functions under this section to any officer or employee of such agency and otherwise to utilize the services and facilities of such agency in carrying out such functions, and payment therefor shall be in advance or by way of reimbursement, as may be provided in such agreement.

(i) Wisconsin Retirement Fund

(1) Notwithstanding paragraph (1) of subsection (d) of this section, the agreement with the State of Wisconsin may, subject to the provisions of this subsection, be modified so as to apply to service performed by employees in positions covered by the Wisconsin retirement fund or any successor system.

(2) All employees in positions covered by the Wisconsin retirement fund at any time on or after January 1, 1951, shall, for the purposes of subsection (c) only, be deemed to be a separate coverage group; except that there shall be excluded from such separate coverage group all employees in positions to which the agreement applies without regard to this subsection.

(3) The modification pursuant to this subsection shall exclude (in the case of employees in the coverage group established by paragraph (2) of this subsection) service performed by any individual during any period before he is included under the Wisconsin retirement fund.

(4) The modification pursuant to this subsection shall, if the State of Wisconsin requests it, exclude (in the case of employees in the coverage group established by paragraph (2) of this subsection) all service performed in policemen's positions, all service performed in firemen's positions, or both.

(j) Certain positions no longer covered by retirement systems

Notwithstanding subsection (d) of this section, an agreement with any State entered into under this section prior to September 1, 1954 may, prior to January 1, 1958, be modified pursuant to subsection (c)(4) of this section so as to apply to services performed by employees, as members of any coverage group to which such agreement already applies (and to which such agreement applied on September 1, 1954), in positions (1) to which such agreement does not already apply, (2) which were covered by a retirement system on the date such agreement was made applicable to such coverage group, and (3) which, by reason of action by such State or political subdivision thereof, as may be appropriate, taken prior to September 1, 1954, are no longer covered by a retirement system on the date such agreement is made applicable to such services.

(k) Certain employees of State of Utah

Notwithstanding the provisions of subsection (d) of this section, the agreement with the State of Utah entered into pursuant to this section may be modified pursuant to subsection (c)(4) of this section so as to apply to services performed for any of the following, the employees performing services for each of which shall constitute a separate coverage group: Weber Junior College, Carbon Junior College, Dixie Junior College, Central Utah Vocational School, Salt Lake Area Vocational School, Center for the Adult Blind, Union High School (Roosevelt, Utah), Utah High School Activities Association, State Industrial School, State Training School, State Board of Education, and Utah School Employees Retirement Board. Any modification agreed to prior to January 1, 1955, may be made effective with respect to services performed by employees as members of any of such coverage groups after an effective date specified therein, except that in no case may any such date be earlier than December 31, 1950. Coverage provided for in this subsection shall not be affected by a subsequent change in the name of a group.

(l) Policemen and firemen in certain States

(1) Any agreement with the State of Alabama, California, Florida, Georgia, Hawaii, Idaho, Kansas, Maine, Maryland, Mississippi, Montana, New York, North Carolina, North Dakota, Oregon, Puerto Rico, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, or Washington entered into pursuant to this section prior to August 1, 1956, may, notwithstanding the provisions of subsection (d)(5)(A) of this section and the references thereto in subsections (d)(1) and (d)(3) of this section, be modified pursuant to subsection (c)(4) of this section to apply to service performed by employees of such State or any political subdivision thereof in any policeman's or fireman's position covered by a retirement system in effect on or after August 1, 1956, but only upon compliance with the requirements of subsection (d)(3) of this section. For the purposes of the preceding sentence, a retirement system which covers positions of policemen or firemen, or both, and other positions shall, if the State concerned so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

(2) A State, not otherwise listed by name in paragraph (1), shall be deemed to be a State listed in such paragraph for the purpose of extending coverage under this subchapter to service in firemen's positions covered by a retirement system, if the governor of the State, or an official of the State designated by him for the purpose, certifies to the Secretary that the overall benefit protection of the employees in such positions would be improved by reason of the extension of such coverage to such employees. Notwithstanding the provisions of the second sentence of such paragraph (1), such firemen's positions shall be deemed a separate retirement system and no other positions shall be included in such system.

(m) Positions compensated solely on a fee basis

(1) Notwithstanding any other provision in this section, an agreement entered into under this section may be made applicable to service performed after 1967 in any class or classes of positions compensated solely on a fee basis to which such agreement did not apply prior to 1968 only if the State specifically requests that its agreement be made applicable to such service in such class or classes of positions.

(2) Notwithstanding any other provision in this section, an agreement entered into under this section may be modified, at the option of the State, at any time after 1967, so as to exclude services performed in any class or classes of positions compensation for which is solely on a fee basis.

(3) Any modification made under this subsection shall be effective with respect to services performed after the last day of the calendar year in which the modification is mailed or delivered by other means to the Secretary.

(4) If any class or classes of positions have been excluded from coverage under the State agreement by a modification agreed to under this subsection, the Secretary and the State may not thereafter modify such agreement so as to again make the agreement applicable with respect to such class or classes of positions.

(n) Redesignated (j)

(o) Redesignated (k)

(p) Redesignated (l)

(q) to (t) Repealed. Pub. L. 99-509, title IX, § 9002(c)(1), Oct. 21, 1986, 100 Stat. 1971

(u) Redesignated (m)

(v) Optional medicare coverage of current employees

(1) The Secretary shall, at the request of any State, enter into or modify an agreement with such State under this section for the purpose of extending the provisions of subchapter XVIII of this chapter, and sections 426 and 426-1 of this title, to services performed by employees of such State or any political subdivision thereof who are described in paragraph (2).

(2) This subsection shall apply only with respect to employees—

(A) whose services are not treated as employment as that term applies under section 410(p) of this title by reason of paragraph (3) of such section; and

(B) who are not otherwise covered under the State's agreement under this section.

(3) Payments by the State required under subsection (e) of this section with respect to employees covered under this subsection shall be limited to amounts equivalent to the sum of the taxes which would be imposed by sections 3101(b) and 3111(b) of the Internal Revenue Code of 1986 if such services for which wages were paid to such employees constituted "employment" as defined in section 3121 of such Code.

(4) For purposes of sections 426 and 426-1 of this title, services covered under an agreement pursuant to this subsection shall be treated as "medicare qualified government employment".

(5) Except as otherwise provided in this subsection, the provisions of this section shall apply with respect to services covered under the agreement pursuant to this subsection.

(Aug. 14, 1935, ch. 531, title II, § 218, as added Aug. 28, 1950, ch. 809, title I, § 106, 64 Stat. 514, and amended June 28, 1952, ch. 483, 66 Stat. 285; Aug. 15, 1953, ch. 504, § 1, 67 Stat. 587; Sept. 1, 1954, ch. 1206, title I, § 101(a)(5), (6), (h)(1)-(8), (i)(1), (2), (j), 68 Stat. 1055-1059; Aug. 1, 1956, ch. 836, title I, §§ 103(f), (g), 104(e), (g), 70 Stat. 823, 825, 826; Aug. 30, 1957, Pub. L. 85-226, §§ 1-3, 71 Stat. 511, 512; Aug. 30, 1957, Pub. L. 85-227, § 1, 71 Stat. 512; Aug. 30, 1957, Pub. L. 85-229, 71 Stat. 513; Aug. 27, 1958, Pub. L. 85-787, §§ 1, 2, 72 Stat. 939; Aug. 28, 1958, Pub. L. 85-798, §§ 2, 3, 72 Stat. 964, 965; Aug. 28, 1958, Pub. L. 85-840, title III, § 315(a)-(c)(1), 72 Stat. 1038-1040; Sept. 16, 1959, Pub. L. 86-284, § 2, 73 Stat. 566; July 12, 1960, Pub. L. 86-624, § 30(e), (f), 74 Stat. 420; Sept. 13, 1960, Pub. L. 86-778, title I, §§ 102(a), (b)(1), (c)(1), (2), (d), (e), (f)(1), (g), (l), 103(i), (j)(2)(G), 74 Stat. 928-930, 934, 936-938; June 30, 1961, Pub. L. 87-64, title I, §§ 106, 107, 75 Stat. 139, 140; Oct. 24, 1962, Pub. L. 87-878, § 2, 76 Stat. 1202; July 2, 1964, Pub. L. 88-350, § 2, 78 Stat. 240; July 23, 1964, Pub. L. 88-382, 78 Stat. 335; July 30, 1965, Pub. L. 89-97, title I, § 108(b), title III, §§ 314, 315, 79 Stat. 338, 385; Jan. 2, 1968, Pub. L. 90-248, title I, §§ 116(a)-(b)(2), (c), (d), 117, 119(a), 120(a), 121, 122(d), 81 Stat. 840-844; Aug. 13, 1968, Pub. L. 90-486, § 7, 82 Stat. 759; Oct. 30, 1972, Pub. L. 92-603, title I, § 126, 86 Stat. 1358; Dec. 31, 1974, Priv. L. 93-107, § 2, 88 Stat. 2386; Dec. 20, 1977, Pub. L. 95-216, title III, §§ 319-321, 353(b), 91 Stat. 1541, 1553; June 9, 1980, Pub. L. 96-265, title V, § 503(a), 94 Stat. 470; Apr. 20, 1983, Pub. L. 98-21, title I, § 103(a), title III, §§ 325(a), 342(a), 97 Stat. 71, 126, 136; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(a)(13), (j)(2)(A)(ii), (3)(A)(iii), 98 Stat. 1164, 1170; Apr. 7, 1986, Pub. L. 99-272, title XII, § 12110(a), (b), title XIII, § 13205(c), 100 Stat. 287, 317; Oct. 21, 1986, Pub. L. 99-509, title IX, § 9002(c)(1), (2)(C)-(E), 100 Stat. 1971, 1972; Oct. 22, 1986, Pub. L. 99-514, § 2, title XVIII, § 1883(a)(8), 100 Stat. 2095, 2916.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in text, is classified to Title 26, Internal Revenue Code.

AMENDMENTS

1986—Subsec. (d)(6). Pub. L. 99-509, § 9002(c)(2)(C), substituted "subsection (e)" for "subsection (f)" in subpar. (A), and "subsection (e)(1)" for "subsection (f)(1)" in subpar. (F).

Subsec. (d)(8)(D). Pub. L. 99-509, § 9002(c)(2)(D), substituted "subsection (l)" for "subsection (p)".

Subsec. (e). Pub. L. 99-509, § 9002(c)(1), (2)(E), redesignated subsec. (f) as (e), substituted "Any agreement" for "Except as provided in subsection (e)(2) of this section, any agreement", and struck out former subsec. (e) which required that agreements under this section include certain provisions relating to payments and reports by States and allowed inclusion of certain provisions relating te employees employed by two or more political subdivisions of a State.

Subsec. (f). Pub. L. 99-509, § 9002(c)(1), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (f)(1). Pub. L. 99-272, § 12110(a), substituted "is mailed or delivered by other means to the Secretary" for "is agreed to by the Secretary and the State".

Subsec. (f)(3). Pub. L. 99-514, § 2, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (g). Pub. L. 99-509, § 9002(c)(1), redesignated subsec. (k) as (g). Former subsec. (g) redesignated (f).

Subsec. (h). Pub. L. 99-509, § 9002(c)(1), redesignated subsec. (*l*) as (h) and struck out former subsec. (h) which required that amounts received by the Secretary of the Treasury under an agreement made under this section be deposited in the Trust Funds and the Federal Hospital Insurance Trust Fund in certain ratio and provided for adjustment of amount due if more or less than correct amount due is paid.

Subsec. (i). Pub. L. 99-509, § 9002(c)(1), redesignated subsec. (m) as (i) and struck out former subsec. (i), relating te regulations of the Secretary.

Subsec. (j). Pub. L. 99-509, § 9002(c)(1), redesignated subsec. (n) as (j) and struck out former subsec. (j) which read as follows: "In case any State does not make, at the time or times due, the payments provided for under an agreement pursuant to this section, there shall be added, as part of the amounts due, interest at the rate of 6 per centum per annum from the date due until paid, and the Secretary may, in his discretion, deduct such amounts plus interest from any amounts certified by him to the Secretary of the Treasury for payment to such State under any other provision of this chapter. Amounts so deducted shall be deemed to have been paid to the State under such other provision of this chapter. Amounts equal to the amounts deducted under this subsection are hereby appropriated to the Trust Funds in the ratio in which amounts are deposited in such Funds pursuant to subsection (h)(1) of this section."

Subsec. (k). Pub. L. 99-509, § 9002(c)(1), redesignated subsec. (o) as (k). Former subsec. (k) redesignated (g).

Subsec. (*l*). Pub. L. 99-509, § 9002(c)(1), redesignated subsec. (p) as (*l*). Former subsec. (*l*) redesignated (h).

Subsec. (m). Pub. L. 99-509, § 9002(c)(1), redcsignated subsec. (u) as (m). Former subsec. (m) redesignated (i).

Pub. L. 99-514, § 1883(a)(8), substituted "Retirement Fund" for "retirement fund" in heading.

Subsec. (n) to (p). Pub. L. 99-509, § 9002(c)(1), redesignated subsecs. (n) te (p) as (j) to (*l*), respectively.

Subsec. (q). Pub. L. 99-509, § 9002(c)(1), struck out subsec. (q) which provided time limitations on liability of States for amounts due under agreements under this section.

Subsec. (r). Pub. L. 99-509, § 9002(c)(1), struck out subsec. (r) which provided time limitations on credits and refunds of overpayments by States under agreements under this section.

Subsec. (s). Pub. L. 99-509, § 9002(c)(1), struck out subsec. (s) which related to review by Secretary.

Subsec. (t). Pub. L. 99-509, § 9002(c)(1), struck out subsec. (t) which provided for judicial review of decisions by Secretary of Health and Human Services under former subsec. (s) of this section.

Subsec. (u). Pub. L. 99-509, § 9002(c)(1), redesignated subsec. (u) as (m).

Subsec. (u)(3). Pub. L. 99-272, § 12110(b), substituted "is mailed or delivered by other means to the Secretary" for "is agreed to by the Secretary and the State".

Subsec. (v). Pub. L. 99-272, § 13205(c), added subsec. (v).

Subsec. (v)(3). Pub. L. 99-514, § 2, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (w). Pub. L. 99-509, § 9002(c)(1), struck out subsec. (w) which read as follows: "Notwithstanding sections 3125(a), 6205(a)(5), 6413(a)(5), and 6413(c)(2)(G) of the Internal Revenue Code of 1954, any State shall make payments of the taxes imposed with respect to services of employees of such State and of a political subdivision thereof under sections 3101(b) and 3111(b) of such Code, and reports of such services, under the same procedures as apply to payments and reports under subsection (e) of this section, but only if any employees of such State or of such political subdivision thereof respectively are covered under an agreement pursuant to this section."

Pub. L. 99-272, § 13205(c), added subsec. (w).

1984—Subsecs. (a)(1), (c)(4), (d)(3), (7), (h)(2), (3). Pub. L. 98-369, § 2663(j)(3)(A)(iii), struck out "of Health, Education, and Welfare" after "Secretary" wherever appearing.

Subsec. (i). Pub. L. 98-369, § 2663(j)(3)(A)(iii), struck out "of Health, Education, and Welfare" after "Secretary".

Pub. L. 98-369, § 2663(a)(13), substituted "chapter 21 and subtitle F of the Internal Revenue Code of 1954" for "subchapter A or E of chapter 9 of the Internal Revenue Code of 1939".

Subsecs. (j), (k)(1), (*l*), (p)(2). Pub. L. 98-369, § 2663(j)(3)(A)(iii), struck out "of Health, Education, and Welfare" after "Secretary" wherever appearing.

Subsecs. (q)(4)(B), (6)(B), (r)(1). Pub. L. 98-369, § 2663(j)(2)(A)(ii), substituted "Secretary of Health and Human Services" for "Secretary of Health, Education, and Welfare" wherever appearing.

1983—Subsec. (e)(1)(A). Pub. L. 98-21, § 342(a), amended subpar. (A) generally, designating existing provisions as cl. (i), and in (i) as so designated, substituting "on the last day of each calendar month" for "within the thirty-day period immediately following the last day of each calendar month" and inserting "with respect to the period which includes the first fifteen days of such calendar month" before "if the services", and adding cl. (ii).

Subsec. (g). Pub. L. 98-21, § 103(a), amended subsec. (g) generally, substituting provision that no agreement under this section may be terminated on or after April 20, 1983, for provision that had authorized the termination of agreements of States with the Secretary conditioned upon the giving of advance notice.

Subsec. (o). Pub. L. 98-21, § 325(a), inserted provision that coverage provided for in this subsection shall not be affected by a subsequent change in the name of a group.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1883(a)(8) of Pub. L. 99-514 effective Oct. 22, 1986, see section 1883(f) of Pub. L. 99-514, set out as a note under section 402 of this title.

Section 9002(d) of Pub. L. 99-509 provided that: "The amendments made by this section [enacting section 3126 of Title 26, Internal Revenue Code, amending sections 405, 418, and 424a of this title and sections 1402, 3121, and 3306 of title 26, and renumbering former section 3126 of title 26 as section 3127] are effective with respect to payments due with respect to wages paid after December 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to the provisions of section 218(e)(2) of the Social Security Act [42 U.S.C. 418(e)(2)] prior to the date of the enactment of this Act [Oct. 21, 1986]; except that in cases where, in accordance with the currently applicable schedule, deposits of taxes due under an agreement entered into pursuant to section 218 of the Social Security Act would be required within 3 days after the close of an eighth-monthly period, such 3-day requirement shall be changed to a 7-day requirement for wages paid prior to October 1, 1987, and to a [illegible]-day requirement for wages paid after September 30, 1987, and prior to October 1, 1988. For wages paid prior to October 1, 1988, the deposit schedule for taxes imposed under sections 3101 and 3111 [26 U.S.C. 3101, 3111] shall be determined separately from the deposit schedule for taxes withheld under section 3402 [26 U.S.C. 3402] if the taxes imposed under sections 3101 and 3111 [26 U.S.C. 3101, 3111] are due with respect to

service included under an agreement entered into pursuant to section 218 of the Social Security Act."

Section 12110(c) of Pub. L. 99-272 provided that: "The amendments made by this section [amending this section] shall apply with respect to agreements and modifications of agreements which are mailed or delivered to the Secretary of Health and Human Services (under section 218 of the Social Security Act [42 U.S.C. 418]) on or after the date of the enactment of this Act [Apr. 7, 1986]."

Section 13205(d)(3) of Pub. L. 99-272 provided that: "The amendment made by subsection (c) [amending this section] shall apply to services performed after March 31, 1986."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 103(b) of Pub. L. 98-21 provided that: "The amendment made by subsection (a) [amending subsec. (g) of this section] shall apply to any agreement in effect under section 218 of the Social Security Act [this section] on the date of the enactment of this Act [April 20, 1983], without regard te whether a notice of termination is in effect on such date, and to any agreement or modification thereof which may become effective under such section 218 after that date."

Section 325(b) of Pub. L. 98-21 provided that: "The amendment made by subsection (a) [amending subsec. (o) of this section] shall apply with respect to name changes made before, on, or after the dato of the enactment of this section [April 20, 1983]."

Section 342(b) of Pub. L. 98-21 provided that: "The amendments made by this section [amending subsec. (e)(1)(A) of this section] shall apply te calendar months beginning after December 31, 1983."

TREATMENT OF CERTAIN CREDITS AS AMOUNTS DEPOSITED IN SOCIAL SECURITY TRUST FUNDS PURSUANT TO AGREEMENT

Section 123(b)(4) of Pub. L. 98-21, as amended by Pub. L. 99-514, § 2, Oct. 22, 1988, 100 Stat. 2095, provided that: "For purposes of subsection (h) of section 218 of the Social Security Act [subsec. (h) of this section] (relating to deposits in social security trust funds of amounts received under section 218 agreements), amounts allowed as a credit pursuant to subsection (d) of section 3510 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 3510(d)] (relating to credit for remuneration paid during 1984 which is covered under an agreement under section 218 of the Social Security Act) shall be treated as amounts received under such an agreement."

MODIFICATION OF AGREEMENT WITH CONNECTICUT TO PROVIDE COVERAGE FOR CONNECTICUT STATE POLICE

Section 12114 of Pub. L. 99-272 provided that: "Notwithstanding any provision of section 218 of the Social Security Act [42 U.S.C. 418], the Secretary of Health and Human Services shall, upon the request of the Governor of Connecticut, modify the agreement under such section between the Secretary and the State of Connecticut to provide that service performed after the date of the enactment of this Act [Apr. 7, 1986] by members of the Division of the State Police within the Connecticut Department of Public Safety, who are hired on or after May 6, 1984, and who are members of the tier II plan of the Counecticut State Employees Retirement System, shall be covered under such agreement."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 402, 405, 405a, 410, 411, 424a of this title; title 26 sections 1402, 3121, 6413, 6511.

§ 421. Disability determinations

(a) State agencies

(1) In the case of any individual, the determination of whether or not he is under a disability (as defined in section 416(i) or 423(d) of this title) and of the day such disability began, and the determination of the day on which such disability ceases, shall be made by a State agency, notwithstanding any other provision of law, in any State that notifies the Secretary in writing that it wishes to make such disability determinations commencing with such month as the Secretary and the State agree upon, but only if (A) the Secretary has not found, under subsection (b)(1)(C) of this section, that the State agency has substantially failed to make disability determinations in accordance with the applicable provisions of this section or rules issued thereunder, and (B) the State has not notified the Secretary, under subsection (b)(2) of this section, that it does not wish to make such determinations. If the Secretary once makes the finding described in clause (A) of the preceding sentence, or the State gives the notice referred to in clause (B) of such sentence, the Secretary may thereafter determine whether (and, if so, beginning with which month and under what conditions) the State may again make disability determinations under this paragraph.

[*See main edition for text of* (2)]

(b) Determinations by Secretary

(1)(A) Upon receiving information indicating that a State agency may be substantially failing te make disability determinations in a manner consistent with regulatious and other written guidelines issued by the Secretary, the Secretary shall immediately conduct an investigation and, within 21 days after the date on which such information is received, shall make a preliminary finding with respect to whether such agency is in substantial compliance with such regulations and guidelines. If the Secretary finds that an agency is not in substantial compliance with such regulations and guidelines, the Secretary shall, on the date such finding is made, notify such agency of such finding and request assurances that such agency will promptly comply with such regulations and guidelines.

(B)(i) Any agency notified of a preliminary finding made pursuant to subparagraph (A) shall have 21 days from the date on which such finding was made to provide the assurances described in subparagraph (A).

(ii) The Secretary shall monitor the compliance with such regulations and guidelines of any agency providing such assurances in accordance with clause (i) for the 30-day period beginning on the day after the date on which such assurances have been provided.

(C) If the Secretary determines that an agency monitored in accordance with clause (ii)

of subparagraph (B) has not substantially complied with such regulations and guidelines during the period for which such agency was monitored, or if an agency notified pursuant to subparagraph (A) fails to provide assurances in accordance with clause (i) of subparagraph (B), the Secretary shall, within 60 days after the date on which a preliminary finding was made with respect to such agency under subparagraph (A), (or within 90 days after such date, if, at the discretion of the Secretary, such agency is granted a hearing by the Secretary on the issue of the noncompliance of such agency) make a final determination as to whether such agency is substantially complying with such regulations and guidelines. Such determination shall not be subject to judicial review.

(D)(i) If the Secretary makes a final determination pursuant to subparagraph (C) with respect to any agency that the agency is not substantially complying with such regulations and guidelines, the Secretary shall, as soon as possible but not later than 180 days after the date of such final determination, make the disability determinations referred to in subsection (a)(1) of this section, complying with the requirements of paragraph (3) to the extent that such compliance is possible within such 180-day period. In order to carry out this subparagraph, the Secretary shall, as the Secretary finds necessary, exceed any applicable personnel ceilings and waive any applicable hiring restrictions. In addition, to the extent feasible within the 180-day period after the final determination, the Secretary, in conjunction with the Secretary of Labor, shall assure the statutory protections of State agency employees not hired by the Secretary.

(ii) During the 180-day period specified in clause (i), the Secretary shall take such actions as may be necessary to assure that any case with respect to which a determination referred to in subsection (a)(1) of this section was made by an agency, during the period for which such agency was not in substantial compliance with the applicable regulations and guidelines, was decided in accordance with such regulations and guidelines.

[*See main edition for text of (2)*]

(3)(A) Except as provided in subparagraph (D)(i) of paragraph (1), the Secretary shall develop and initiate all appropriate procedures to implement a plan with respect to any partial or complete assumption by the Secretary of the disability determination function from a State agency, as provided in this section, under which employees of the affected State agency who are capable of performing duties in the disability determination process for the Secretary shall, notwithstanding any other provision of law, have a preference over any other individual in filling an appropriate employment position with the Secretary (subject to any system established by the Secretary for determining hiring priority among such employees of the State agency) unless any such employee is the administrator, the deputy administrator, or assistant administrator (or his equivalent) of the State agency, in which case the Secretary may accord such priority to such employee.

(B) Except as provided in subparagraph (D)(i) of paragraph (1), the Secretary shall not make such assumption of the disability determination function until such time as the Secretary of Labor determines that, with respect to employees of such State agency who will be displaced from their employment on account of such assumption by the Secretary and who will not be hired by the Secretary to perform duties in the disability determination process, the State has made fair and equitable arrangements to protect the interests of employees so displaced. Such protective arrangements shall include only those provisions which are provided under all applicable Federal, State and local statutes including, but not limited to, (i) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective-bargaining agreements; (ii) the continuation of collective-bargaining rights; (iii) the assignment of affected employees to other jobs or to retraining programs; (iv) the protection of individual employees against a worsening of their positions with respect to their employment; (v) the protection of health benefits and other fringe benefits; and (vi) the provision of severance pay, as may be necessary.

[*See main edition for text of (c)*]

(d) Hearings and judicial review

Except as provided in subsection (b)(1)(D) of this section, any individual dissatisfied with any determination under subsection (a), (b), (c), or (g) of this section shall be entitled to a hearing thereon by the Secretary to the same extent as is provided in section 405(b) of this title with respect to decisions of the Secretary, and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title.

(e) State's right to cost from Trust Funds

Each State which is making disability determinations under subsection (a)(1) of this section shall be entitled to receive from the Trust Funds, in advance or by way of reimbursement, as determined by the Secretary, the cost to the State of making disability determinations under subsection (a)(1) of this section. The Secretary shall from time to time certify such amount as is necessary for this purpose to the Managing Trustee, reduced or increased, as the case may be, by any sum (for which adjustment hereunder has not previously been made) by which the amount certified for any prior period was greater or less than the amount which should have been paid to the State under this subsection for such period; and the Managing Trustee, prior to audit or settlement by the General Accounting Office, shall make payment from the Trust Funds at the time or times fixed by the Secretary, in accordance with such certification. Appropriate adjustments between the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund with respect to the payments made under this subsection shall be made in accordance with paragraph (1) of subsection (g) of section 401 of this title (but

taking into account any refunds under subsection (f) of this section) to insure that the Federal Disability Insurance Trust Fund is charged with all expenses incurred which are attributable to the administration of section 423 of this title and the Federal Old-Age and Survivors Insurance Trust Fund is charged with all other expenses.

[*See main edition for text of (f) and (g)*]

(b) Evaluation of mental impairments by qualified medical professionals

An initial determination under subsection (a), (c), (g), or (i) of this section that an individual is not under a disability, in any case where there is evidence which indicates the existence of a mental impairment, shall be made only if the Secretary has made every reasonable effort to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment.

(l) Review of disability cases to determine continuing eligibility; permanent disability cases; appropriate number of cases reviewed; reporting requirements

[*See main edition for text of (1) to (3)*]

(4) In any case in which the Secretary initiates a review under this subsection of the case of an individual who has been determined to be under a disability, the Secretary shall notify such individual of the nature of the review to be carried out, the possibility that such review could result in the termination of benefits, and the right of the individual to provide medical evidence with respect to such review.

(j) Rules and regulations; consultative examinations

The Secretary shall prescribe regulations which set forth, in detail—

(1) the standards to be utilized by State disability determination services and Federal personnel in determining when a consultative examination should be obtained in connection with disability determinations;

(2) standards for the type of referral to be made; and

(3) procedures by which the Secretary will monitor both the referral processes used and the product of professionals to whom cases are referred.

Nothing in this subsection shall be construed to preclude the issuance, in accordance with section 553(b)(A) of title 5, of interpretive rules, general statements of policy, and rules of agency organization relating to consultative examinations if such rules and statements are consistent with such regulations.

(k) Establishment of uniform standards for determination of disability

(1) The Secretary shall establish by regulation uniform standards which shall be applied at all levels of determination, review, and adjudication in determining whether individuals are under disabilities as defined in section 416(i) or 423(d) of this title.

(2) Regulations promulgated under paragraph (1) shall be subject to the rulemaking procedures established under section 553 of title 5.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(a)(14), 98 Stat. 1164; Oct. 9, 1984, Pub. L. 98-460, §§ 6(a), 8(a), 9(a)(1), 10(a), 17(a), 98 Stat. 1802, 1804, 1805, 1811; Oct. 22, 1986, Pub. L. 99-514, title XVIII, § 1883(a)(9), 100 Stat. 2916.)

AMENDMENTS

1986—Subsec. (e). Pub. L. 99-514 struck out "under this section" before "shall be entitled".

1984—Subsec. (a)(1)(A). Pub. L. 98-460, § 17(a)(2), substituted "subsection (b)(1)(C) of this section" for "subsection (b)(1) of this section".

Subsec. (b)(1). Pub. L. 98-460, § 17(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "If the Secretary finds, after notice and opportunity for a hearing, that a State agency is substantially failing to make disability determinations in a manner consistent with his regulations and other written guidelines, the Secretary shall, not earlier than 180 days following his finding, and after he has complied with the requirements of paragraph (3), make the disability determinations referred to in subsection (a)(1) of this section."

Subsec. (b)(3). Pub. L. 98-460, § 17(a)(3), substituted "Except as provided in subparagraph (D)(i) of paragraph (1), the Secretary" for "The Secretary" in subpars. (A) and (B).

Subsec. (d). Pub. L. 98-460, § 17(a)(4), substituted "Except as provided in subsection (b)(1)(D) of this section, any individual" for "Any individual".

Subsec. (e). Pub. L. 98-369 substituted "Federal Disability Insurance Trust Fund is charged" for "Federal Disability Trust Fund is charged".

Subsec. (h). Pub. L. 98-460, § 8(a), added subsec. (h).

Subsec. (i)(4). Pub. L. 98-460, § 6(a), added par. (4).

Subsec. (j). Pub. L. 98-460, § 9(a)(1), added subsec. (j).

Subsec. (k). Pub. L. 98-460, § 10(a), added subsec. (k).

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENTS

Section 8(c) of Pub. L. 98-460 provided that: "The amendments made by this section [amending sections 421 and 1382c of this title] shall apply to determinations made after 60 days after the date of the enactment of this Act [Oct. 9, 1984]."

Section 17(b) of Pub. L. 98-460 provided that: "The amendments made by subsection (a) of this section [amending subsecs. (a)(1), (b)(1), (3), and (d) of this section] shall become effective on the date of the enactment of this Act [Oct. 9, 1984] and shall expire on December 31, 1987. The provisions of the Social Security Act amended by subsection (a) of this section (as such provisions were in effect immediately before the date of the enactment of this Act) shall be effective after December 31, 1987."

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

MORATORIUM ON MENTAL IMPAIRMENT REVIEWS

Section 5 of Pub. L. 98-460 provided that:

"(a) The Secretary of Health and Human Services (hereafter in this section referred to as the 'Secretary') shall revise the criteria embodied under the category 'Mental Disorders' in the 'Listing of Impairments' in effect on the date of the enactment of this Act [Oct. 9, 1984] under appendix 1 to subpart P of part 404 of title 20 of the Code of Federal Regulations. The revised criteria and listings, alone and in combination with assessments of the residual functional capac-

ity of the individuals involved, shall be designed to realistically evaluate the ability of a mentally impaired individual to engage in substantial gainful activity in a competitive workplace environment. Regulations establishing such revised criteria and listings shall be published no later than 120 days after the date of the enactment of this Act.

"(b)(1) Until such time as revised criteria have been established by regulation in accordance with subsection (a), no continuing eligibility review shall be carried out under section 221(i) of the Social Security Act [42 U.S.C. 421(i)], or under the corresponding requirements established for disability determinations and reviews under title XVI of such Act [42 U.S.C. 1381 et seq.], with respect to any individual previously determined to be under a disability by reason of a mental impairment, if—

"(A) no initial decision on such review has been rendered with respect to such individual prior to the date of the enactment of this Act [Oct. 9, 1984], or

"(B) an initial decision on such review was rendered with respect to such individual prior to the date of the enactment of this Act but a timely appeal from such decision was filed or was pending on or after June 7, 1983.

For purposes of this paragraph and subsection (c)(1) the term 'continuing eligibility review', when used to refer to a review of a previous determination of disability, includes any reconsideration of or hearing on the initial decision rendered in such review as well as such initial decision itself, and any review by the Appeals Council of the hearing decision.

"(2) Paragraph (1) shall not apply in any case where the Secretary determines that fraud was involved in the prior determination, or where an individual (other than an individual eligible to receive benefits under section 1619 of the Social Security Act [42 U.S.C. 1382h]) is determined by the Secretary to be engaged in substantial gainful activity (or gainful activity, in the case of a widow, surviving divorced wife, widower, or surviving divoreed husband for purposes of section 202(e) and (f) of such Act [42 U.S.C. 402(e), (f)]).

"(c)(1) Any initial detormination that an individual is not under a disability by reason of a mental impairment and any determination that an individual is not under a disability by reason of a mental impairment in a reconsideration of or hearing on an initial disability determination, made or held under title II or XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.] after the date of the enactment of this Act [Oct. 9, 1984] and prior to the date on which revised criteria are established by regulation in accordance with subsection (a), and any detormination that an individual is not under a disability by reason of a mental impairment made under or in accordance with title II or XVI of such Act in a reconsideration of, hearing on, review by the Appeals Council of, or judicial review of a decision rendered in any continuing eligibility review to which subsection (b)(1) applies, shall be redetermined by the Secretary as soon as feasible after the date on which such criteria are so established, applying such revised criteria.

"(2) In the case of a redetermination under paragraph (1) of a prior action which found that an individual was not under a disability, if such individual is found on redetormination to be under a disability, such redetermination shall be applied as though it had been made at the time of such prior action.

"(3) Any individual with a mental impairment who was found to be not disabled pursuant to an initial disability determination or a continuing eligibility review between March 1, 1981, and the date of the enactment of this Act [Oct. 9, 1984], and who reapplies for benefits under title II or XVI of the Social Security Act, may be determined to be under a disability during the period considered in the most recent prior determination. Any reapplication under this paragraph must be filed within one year after the date of the enactment of this Act, and benefits payable as a result of the preceding sentence shall be paid only on the basis of the reapplication."

INSTITUTION OF NOTIFICATION SYSTEM

Section 6(c) of Pub. L. 98-460 provided that: "The Secretary shall institute a system of notification required by the amendments made by subsections (a) and (b) [amending sections 421 and 1383b of this title] as soon as is practicable after the date of the enactment of this Act [Oct. 9, 1984]."

DEMONSTRATION PROJECTS; OPPORTUNITY FOR PERSONAL APPEARANCE PRIOR TO DISABILITY DETERMINATIONS; REPORT TO CONORESSIONAL COMMITTEES

Section 6(d), (e), of Pub. L. 98-460 provided that:

"(d) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act [Oct. 9, 1984], implement demonstration projects in which the opportunity for a personal appearance prior to a determination of ineligibility for persons reviewed under section 221(i) of the Social Security Act [42 U.S.C. 421(i)] is substituted for the face to face evidentiary hearing required by section 205(b)(2) of such Act [42 U.S.C. 405(h)(2)]. Such demonstration projects shall be conducted in not fewer than five States, and shall also include disability determinations with respect to individuals reviewed under title XVI of such Act [42 U.S.C. 1381 et seq.]. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senato concerning such demonstration projects, together with any recommendations, not later than December 31, 1966.

"(e) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act [Oct. 9, 1984], implement demonstration projects in which the opportunity for a personal appearance is provided the applicant prior to initial disability determinations under subsections (a), (c), and (g) of section 221 of the Social Security Act [42 U.S.C. 421(a), (c), (g)], and prior to initial disability determinations on applications for benefits under title XVI of such Act [42 U.S.C. 1381 ct seq.]. Such demonstration projects shall be conducted in not fewer than five States. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than December 31, 1988."

PROMULGATION OF REGULATIONS

Section 9(a)(2) of Pub. L. 98-460 provided that: "The Secretary of Health and Human Services shall prescribe regulations required under section 221(j) of the Social Security Act [42 U.S.C. 421(j)] not later than 180 days after the date of the cnactment of this Act [Oct. 9, 1984]."

FREQUENCY OF CONTINUING ELIGIBILITY REVIEWS

Section 15 of Pub. L. 98-460 provided that: "The Secretary of Health and Human Services shall promulgato final regulations, within 180 days after the date of the enactment of this Act [Oct. 9, 1984], which establish the standards to be used by the Secretary in determining the frequency of reviews under section 221(i) of the Social Security Act [42 U.S.C. 421(i)]. Until such regulations have heen issued as final regulations, no individual may be reviewed more than once under section 221(i) of the Social Security Act [42 U.S.C. 421(i)]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is refcrred to in sections 423, 425, 1382c, 1383b of this title; title 7 section 2012; title 30 section 923.

§ 422. Rehabilitation services

(a) Referral for rehabilitation services

It is declared to be the policy of the Congress that disabled individuals applying for a determination of disability, and disabled individuals who are entitled to child's insurance benefits, widow's insurance benefits, or widower's insurance benefits, shall be promptly referred to the State agency or agencies administering or supervising the administration of the State plan approved under title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.] for necessary vocational rehabilitation services, to the end that the maximum number of such individuals may be rehabilitated into productive activity.

(b) Deductions on account of refusal to accept rehabilitation services

(1) Deductions, in such amounts and at such time or times as the Secretary shall determine, shall be made from any payment or payments under this subchapter to which an individual is entitled, until the total of such deductions equals such individual's benefit or benefits under sections 402 and 423 of this title for any month in which such individual, if a child who has attained the age of eighteen and is entitled to child's insurance benefits, a widow, widower, surviving divorced wife, or surviving divorced husband who has not attained age 60, or an individual entitled to disability insurance benefits, refuses without good cause to accept rehabilitation services available to him under a Stato plan approved under title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.]. Any individual who is a member or adherent of any recognized church or religious sect which teaches its members or adherents to rely solely, in the treatment and cure of any physical or mental impairment, upon prayer or spiritual means through the application and use of the tenets or teachings of such church or sect, and who, solely because of his adherence to the teachings or tenets of such church, or sect, refuses to accept rehabilitation services available to him under a State plan approved under title I of the Rehabilitation Act of 1973, shall, for the purposes of the first sentence of this subsection, be deemed to have done so with good cause.

(2) Deductions shall be made from any child's insurance benefit to which a child who has attained the age of eighteen is entitled or from any mother's or father's insurance benefit to which a person is entitled, until the total of such deductions equals such child's insurance benefit or benefits or such mother's or father's insurance benefit or benefits under section 402 of this title for any month in which such child or person entitled to mother's or father's insurance benefits is married to an individual who is entitled to disability insurance benefits and in which such individual refuses to accept rehabilitation services and a deduction, on account of such refusal, is imposed under paragraph (1) of this subsection. If both this paragraph and paragraph (3) of this subsection are applicable to a child's insurance benefit for any month, only an amount equal to such benefit shall be deducted.

(3) Deductions shall be made from any wife's, husband's, or child's insurance benefit, based on the wages and self-employment income of an individual entitled to disability insurance benefits, to which a wife, divorced wife, husband, divorced husband, or child is entitled, until the total of such deductions equals such wife's, husband's, or child's insurance benefit or benefits under section 402 of this title for any month in which the individual, on the basis of whose wages and self-employment income such benefit was payable, refuses to accept rehabilitation services and deductions, on account of such refusal, are imposed under paragraph (1) of this subsection.

(4) The provisions of paragraph (1) shall not apply to any child entitled to benefits under section 402(d) of this title, if he has attained the age of 18 but has not attained the age of 22, for any month during which he is a full-time elementary or secondary school student (as defined and determined under section 402(d) of this title).

[*See main edition for text of* (c)]

(d) Cost of rehabilitation services from trust funds

(1) For purposes of making vocational rehabilitation services more readily available to disabled individuals who are—

[*See main edition for text of* (A) *to* (D)]

to the end that savings will accrue to the Trust Funds as a result of rehabilitating such individuals, there are authorized to be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund each fiscal year such sums as may be necessary to enable the Secretary to reimburse the State for the reasonable and necessary costs of vocational rehabilitation services furnished such individuals (including services during their waiting periods), under a State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.], (i) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, (ii) in cases where such individuals receive benefits as a result of section 425(b) of this title (except that no reimbursement under this paragraph shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month in which his or her entitlement to such benefits ceases, whichever first occurs), and (iii) in cases where such individuals, without good cause, refuse to continue to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation. The determination that the vocational rehabilitation services contributed to the successful return of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to pre-

clude successful rehabilitation, and the determination of the amount of costs to be reimbursed under this subsection shall be made by the Commissioner of Social Security in accordance with criteria formulated by him.

[*See main edition for text of (2) to (5)*]

(As amended Apr. 20, 1983, Pub. L. 98-21, title III, § 309(*l*)-(n), 97 Stat. 117; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(a)(15), 98 Stat. 1165; Oct. 9, 1984, Pub. L. 98-460, § 11(a), 98 Stat. 1805.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsecs. (a), (b)(1), and (d)(1), (5), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended. Title 1 of the Rehabilitation Act of 1973 is classified generally to subchapter I (§ 720 et seq.) of chapter 16 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

AMENDMENTS

1984—Subsecs. (a), (b)(1). Pub. L. 98-369, § 2663(a)(15)(A), substituted "title I of the Rehabilitation Act of 1973" for "the Vocational Rehabilitation Act".

Subsec. (b)(3). Pub. L. 98-369, § 2663(a)(15)(B), substituted "equals" for "equal".

Subsec. (b)(4). Pub. L. 98-369, § 2663(a)(15)(C), substituted "full-time elementary or secondary school student" for "full-time student".

Subsec. (d)(1). Pub. L. 98-460, § 11(a), in provisions following subpar. (D) struck out "into substantial gainful activity" after "rehabilitating such individuals", designated existing provisions as cl. (i), added cls. (ii) and (iii), and substituted "of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation," for "of such individuals to substantial gainful activity" after cl. (iii).

1983—Subsec. (b)(1). Pub. L. 98-21, § 309(*l*), substituted ", surviving divorced wife, or surviving divorced husband" for "or surviving divorced wife".

Subsec. (b)(2). Pub. L. 98-21, § 309(m), inserted "or father's" after "mother's" wherever appearing.

Subsec. (b)(3). Pub. L. 98-21, § 309(n), inserted "divorced husband," after "hnsband,".

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 11(c) of Pub. L. 98-460 provided that: "The amendments made by this section [amending sections 422 and 1382d of this title] shall apply with respect to individuals who receive benefits as a result of section 225(b) or section 1631(a)(6) of the Social Security Act [42 U.S.C. 425(b), 1383(a)(6)], or who refuse to continue to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after the first month following the month in which this Act is enacted [Oct. 1984]."

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, statns, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 98-21, set out as a note under section 402 of this title.

§ 423. Disability insurance benefit payments

(a) Disability insurance benefits

(1) Every individual who—

(A) is insured for disability insurance benefits (as determined under subsection (c)(1) of this section),

(B) has not attained retirement age (as defined in section 416(*l*) of this title),

(C) has filed application for disability insurance benefits, and

(D) is under a disability (as defined in subsection (d) of this section)

shall be entitled to a disability insurance benefit (i) for each month beginning with the first month after his waiting period (as defined in subsection (c)(2) of this section) in which he becomes so entitled to such insurance benefits, or (ii) for each month beginning with the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was entitled to disability insurance benefits which terminated, or had a period of disability (as defined in section 416(i) of this title) which ceased, within the 60-month period preceding the first month in which he is under such disability, and ending with the month preceding whichever of the following months is the earliest: the month in which he dies, the month in which he attains retirement age (as defined in section 416(*l*) of this title), or, subject to subsection (e) of this section, the termination month. For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 422(c)(4)(A) of this title, the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity. No payment under this paragraph may be made to an individual who would not meet the definition of disability in subsection (d) of this section except for paragraph (1)(B) thereof for any month in which he engages in substantial gainful activity, and no payment may be made for such month under subsection (b), (c), or (d) of section 402 of this title to any person on the basis of the wages and self-employment income of such individual. In the case of a deceased individual, the requirement of subparagraph (C) may be satisfied by an application for benefits filed with respect to such individual within 3 months after the month in which he died.

[*See main edition for text of (2); (b)*]

(c) Definitions; insured status; waiting period

For purposes of this section—

(1) An individual shall be insured for disability insurance benefits in any month if—

[*See main edition for text of (A)*]

(B)(i) he had not less than 20 quarters of coverage during the 40-quarter period which ends with the quarter in which such month occurred, or

(ii) if such month ends before the quarter in which he attains (or would attain) age 31, not less than one-half (and not less than 6) of the quarters during the period ending with the quarter in which such month occurred and beginning after he attained the age of 21 were quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter were quarters of coverage, or

(iii) in the case of an individual (not otherwise insured under clause (i)) who, by reason of section 416(i)(3)(B)(ii) of this title, had a prior period of disability that began during a period before the quarter in which he or she attained age 31, not less than one-half of the quarters beginning after such individual attained age 21 and ending with the quarter in which such month occurs are quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter are quarters of coverage;

except that the provisions of subparagraph (B) of this paragraph shall not apply in the case of an individual who is blind (within the meaning of "blindness" as defined in section 416(i)(1) of this title). For purposes of subparagraph (B) of this paragraph, when the number of quarters in any period is an odd number, such number shall be reduced by one, and a quarter shall not be counted as part of any period if any part of such quarter was included in a period of disability unless such quarter was a quarter of coverage.

[*See main edition for text of (2)*]

(d) "Disability" defined

[*See main edition for text of (1)*]

(2) For purposes of paragraph (1)(A)—

(A) An individual (except a widow, surviving divorced wife, widower, or surviving divorced husband for purposes of section 402(e) or (f) of this title) shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

(B) A widow, surviving divorced wife, widower, or surviving divorced husband shall not be determined to be under a disability (for purposes of section 402(e) or (f) of this title) unless his or her physical or mental impairment or impairments are of a level of severity which under regulations prescribed by the Secretary is deemed to be sufficient to preclude an individual from engaging in any gainful activity.

(C) In determining whether an individual's physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under this section, the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity. If the Secretary does find a medically severe combination of impairments, the combined impact of the impairments shall be considered throughout the disability determination process.

[*See main edition for text of (3) and (4)*]

(5)(A) An individual shall not be considered to be under a disability unless he furnishes such medical and other evidence of the existence thereof as the Secretary may require. An individual's statoment as to pain or other symptoms shall not alone be conclusive evidence of disability as defined in this section; there must be medical signs and findings, established by medically acceptable clinical or laboratory diagnostic techniques, which show the existence of a medical impairment that results from anatomical, physiological, or psychological abnormalities which could reasonably be expected to produce the pain or other symptoms alleged and which, when considered with all evidence required to be furnished under this paragraph (including statements of the individual or his physician as to the intensity and persistence of such pain or other symptoms which may reasonably be accepted as consistent with the medical signs and findings), would lead to a conclusion that the individual is under a disability. Objective medical evidence of pain or other symptoms established by medically acceptable clinical or laboratory techniques (for example, deteriorating nerve or muscle tissue) must be considered in reaching a conclusion as to whether the individual is under a disability. Any non-Federal hospital, clinic, laboratory, or other provider of medical services, or physician not in the employ of the Federal Government, which supplies medical evidence required and requested by the Secretary under this paragraph shall be entitled to payment from the Secretary for the reasonable cost of providing such evidence.

(B) In making any determination with respect to whether an individual is under a disability or continues to be under a disability, the Secre-

tary shall consider all evidence available in such individual's case record, and shall develop a complete medical history of at least the preceding twelve months for any case in which a determination is made that the individual is not under a disability. In making any determination the Secretary shall make every reasonable effort to obtain from the individual's treating physician (or other treating health care provider) all medical evidence, including diagnostic tests, necessary in order to properly make such determination, prior to evaluating medical evidence obtained from any other source on a consultative basis.

[*See main edition for text of (6)*]

(e) Engaging in substantial gainful activity

No benefit shall be payable under subsection (d)(1)(B)(ii), (d)(6)(A)(ii), (d)(6)(B), (e)(1)(B)(ii), or (f)(1)(B)(ii) of section 402 of this title or under subsection (a)(1) of this section to an individual for any month, after the third month, in which he engages in substantial gainful activity during the 15-month period following the end of his trial work period determined by application of section 422(c)(4)(A) of this title.

(f) Standard of review for termination of disability benefits

A recipient of benefits under this subchapter or subchapter XVIII of this chapter based on the disability of any individual may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

(1) substantial evidence which demonstrates that—

(A) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work), and

(B)(i) the individual is now able to engage in substantial gainful activity, or

(ii) if the individual is a widow or surviving divorced wife under section 402(e) of this title or a widower or surviving divorced husband under section 402(f) of this title, the severity of his or her impairment or impairments is no longer deemed, under regulations prescribed by the Secretary, sufficient to preclude the individual from engaging in gainful activity; or

(2) substantial evidence which—

(A) consists of new medical evidence and (in a case to which clause (ii)(II) does not apply) a new assessment of the individual's residual functional capacity, and demonstrates that—

(i) although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology (related to the individual's ability to work), and

(ii)(I) the individual is now able to engage in substantial gainful activity, or

(II) if the individual is a widow or surviving divorced wife under section 402(e) of this title or a widower or surviving divorced husband under section 402(f) of this title, the severity of his or her impairment or impairments is no longer deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity, or

(B) demonstrates that—

(i) although the individual has not improved medically, he or she has undergone vocational therapy (related to the individual's ability to work), and

(ii) the requirements of subclause (I) or (II) of subparagraph (A)(ii) are met; or

(3) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore—

(A) the individual is able to engage in substantial gainful activity, or

(B) if the individual is a widow or surviving divorced wife under section 402(e) of this title or a widower or surviving divorced husband under section 402(f) of this title, the severity of his or her impairment or impairments is not deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity; or

(4) substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates te that determination) which demonstrates that a prior determination was in error.

Nothing in this subsection shall be construed to require a determination that a recipient of benefits under this subchapter or subchapter XVIII of this chapter based on an individual's disability is entitled to such benefits if the prior determination was fraudulently obtained or if the individual is engaged in substantial gainful activity (or gainful activity in the case of a widow, surviving divorced wife, widower, or surviving divorced husband), cannot be located, or fails, without good cause, to cooperate in a review of the entitlement to such benefits or to follow prescribed treatment which would be expected to restore his or her ability to engage in substantial gainful activity (or gainful activity in the case of a widow, surviving divorced wife, widower, or surviving divorced husband). Any determination under this section shall be made on the basis of all the evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition which is presented by the individual or secured by the Secretary. Any determination made under this section shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to

the presence or absence of disability being drawn from the fact that the individual has previously been determined to be disabled. For purposes of this subsection, a benefit under this subchapter is based on an individual's disability if it is a disability insurance benefit, a child's, widow's, or widower's insurance benefit based on disability, or a mother's or father's insurance benefit based on the disability of the mother's or father's child who has attained age 16.

(g) Continued payment of disability benefits during appeal

(1) In any case where—

[See main edition for text of (A) to (C)]

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits, the payment of any other benefits under this subchapter based on such individual's wages and self-employment income, the payment of mother's or father's insurance benefits to such individual's mother or father based on the disability of such individual as a child who has attained age 16, and the payment of benefits under subchapter XVIII of this chapter based on such individual's disability, continued for an additional period beginning with the first month beginning after January 12, 1983, for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (i) the month preceding the month in which a decision is made after such a hearing, (ii) the month preceding the month in which no such request for a hearing or an administrative review is pending, or (iii) June 1988.

[See main edition for text of (2)]

(3) The provisions of paragraphs (1) and (2) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made—

[See main edition for text of (A)]

(B) prior to January 1, 1988.

(h) Payments to prisoners

For provisions relating to limitation on payments to prisoners, see section 402(x) of this title.

(As amended Apr. 20, 1983, Pub. L. 98-21, title II, § 201(c)(1)(E), (3), title III, §§ 309(o), 332(b), 339(b), 97 Stat. 109, 117, 129, 134; Oct. 11, 1983, Pub. L. 98-118, § 2, 97 Stat. 803; July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2661(m), 2662(c)(2), (i), 2663(a)(16), 98 Stat. 1158-1160, 1165; Oct. 9, 1984, Pub. L. 98-460, §§ 2(a), 3(a)(1), 4(a)(1), 7(a), 9(b)(1), 98 Stat. 1794, 1799, 1800, 1803, 1805; Apr. 7, 1986, Pub. L. 99-272, title XII, § 12107(b), 100 Stat. 286; Oct. 22, 1986, Pub. L. 99-514, title XVIII, § 1883(a)(10), 100 Stat. 2916.)

AMENDMENTS

1986—Subsec. (e). Pub. L. 99-272 inserted "(d)(6)(A)(ii), (d)(6)(B)," after "(d)(1)(B)(ii)".

Subsec. (g)(1). Pub. L. 99-514 struck out second comma after "payment of such benefits" in last sentence.

1984—Subsec. (a)(1)(B). Pub. L. 98-369, § 2662(c)(2), made a clarifying amendment to Pub. L. 98-21, § 201(c)(3). See 1983 Amendment note below.

Subsec. (c)(1)(B). Pub. L. 98-369, § 2661(m), realigned margins of subpar. (B).

Subsec. (d)(2)(A). Pub. L. 98-369, § 2663(a)(16), substituted "An individual" for "an individual".

Subsec. (d)(2)(C). Pub. L. 98-460, § 4(a)(1), added subpar. (C).

Subsec. (d)(5). Pub. L. 98-480, § 9(b)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 98-460, § 3(a)(1), inserted provisions requiring, in making determinations as to whether an individual is under a disability, that subjective statements as to pain or other symptoms alleged to be disabling be supplemented by, and considered together with, objective medical evidence of those symptoms showing the existence of a medical impairment resulting from anatomical, physiological, or psychological abnormalities.

Subsec. (f). Pub. L. 98-460, § 2(a), amended subsec. (f) generally, substituting provisions relating to the standard of review for termination of disability benefits for provisions relating to suspension of benefits for inmates of penal institutions.

Subsec. (g)(1). Pub. L. 98-460, § 7(a)(1), in provisions following subpar. (C) substituted reference to benefits under this subchapter for reference to benefits under this chapter, inserted references to the payment of mother's or father's insurance benefits to such individual's mother or father based on the disability of such individual as a child who has attained age 16, substituted reference to benefits under subchapter XVIII of this chapter based on such individual's disability for reference to benefits under subchapter XVIII of this chapter, and substituted "June 1988" for "June 1984" in cl. (iii).

Subsec. (g)(3)(B). Pub. L. 98-460, § 7(a)(2), substituted "January 1, 1988" for "December 7, 1983".

Subsec. (h). Pub. L. 98-369, § 2662(i), amended Pub. L. 98-21, § 339(b) resulting in the addition of subsec. (h) of this section. See 1983 Amendment note below.

1983—Subsec. (a)(1). Pub. L. 98-21, § 201(c)(1)(E), substituted "retirement age (as defined in section 416(l) of this title)" for "age 65".

Subsec. (a)(1)(B). Pub. L. 98-21, § 201(c)(3), as amended by Pub. L. 98-369, § 2662(c)(2), substituted "retirement age (as defined in section 416(l) of this title)" for "the age of sixty-five".

Subsec. (c)(1)(B)(iii). Pub. L. 98-21, § 332(b), added cl. (iii).

Subsec. (d)(2). Pub. L. 98-21, § 309(o), substituted "widower, or surviving divorced husband" for "or widower" wherever appearing.

Subsec. (f). Pub. L. 96-21, § 339(b), before amendment by Pub. L. 98-369, § 2662(i), struck out subsec. (f) relating to suspension of benefits for inmates of penal institutions. See note below for subsec. (h).

Subsec. (g)(3)(B). Pub. L. 98-118 substituted "December 7, 1983" for "October 1, 1983".

Subsec. (h). Pub. L. 98-21, § 339(b), as amended by Pub. L. 98-369, § 2662(i), added subsec. (h).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 effective Dec. 1, 1980, and applicable with respect to any individual who is under a disability (as defined in subsection (d) of this section) on or after that date, see section 12107(c) of Pub. L. 99-272, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 2(d) of Pub. L. 98-460 provided that:

"(1) The amendments made by this section [amending sections 416, 423, and 1382c of this title and enacting provisions set out as notes under section 423 of

this title] shall apply only as provided in this subsection.

"(2) The amendments made by this section shall apply to—

"(A) determinations made by the Secretary on or after the date of the enactment of this Act [Oct. 9, 1984];

"(B) determinations with respect to which a final decision of the Secretary has not yet been made as of the date of the enactment of this Act [Oct. 9, 1984] and with respect to which a request for administrative review is made in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act [42 U.S.C. 405] and regulations of the Secretary;

"(C) determinations with respect to which a request for judicial review was pending on September 19, 1984, and which involve an individual litigant or a member of a class in a class action who is identified by name in such pending action on such date; and

"(D) determinations with respect to which a timely request for judicial review is or has been made by an individual litigant of a final decision of the Secretary made within 60 days prior to the date of the enactment of this Act [Oct. 9, 1984].

In the case of determinations described in subparagraphs (C) and (D) in actions relating to medical improvement, the court shall remand such cases to the Secretary for review in accordance with the provisions of the Social Security Act as amended by this section.

"(3) In the case of a recipient of benefits under title II, XVI, or XVIII of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq., 1395 et seq.]—

"(A) who has been determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits were provided has ceased, does not exist, or is not disabling, and

"(B) who was a member of a class certified on or before September 19, 1984, in a class action relating to medical improvement pending on September 19, 1984, but was not identified by name as a member of the class on such date,

the court shall remand such case to the Secretary. The Secretary shall notify such individual by certified mail that he may request a review of the determination described in subparagraph (A) based on the provisions of this section and the provisions of the Social Security Act as amended by this section. Such notification shall specify that the individual must request such review within 120 days after the date on which such notification is received. If such request is made in a timely manner, the Secretary shall make a review of the determination described in subparagraph (A) in accordance with the provisions of this section and the provisions of the Social Security Act as amended by this section. The amendments made by this section shall apply with respect to such review, and the determination described in subparagraph (A) (and any redetermination resulting from such review) shall be subject to further administrative and judicial review, only if such request is made in a timely manner.

"(4) The decision by the Secretary on a case remanded by a court pursuant to this subsection shall be regarded as a new decision on the individual's claim for benefits, which supersedes the final decision of the Secretary. The new decision shall be subject to further administrative review and to judicial review only in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act [42 U.S.C. 405] and regulations issued by the Secretary in conformity with such section.

"(5) No class in a class action relating to medical improvement may be certified after September 19, 1984, if the class action seeks judicial review of a decision terminating entitlement (or a period of disability) made by the Secretary of Health and Human Services prior to September 19, 1984.

"(6) For purposes of this subsection, the term 'action relating to medical improvement' means an action raising the issue of whether an individual who has had his entitlement to benefits under title II, XVI, or XVIII of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq., 1395 et seq.] based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability."

Section 3(a)(3) of Pub. L. 98-460 provided that: "The amendments made by paragraphs (1) and (2) [amending sections 423 and 1382c of this title] shall apply to determinations made prior to January 1, 1987."

Section 4(c) of Pub. L. 98-460 provided that: "The amendments made by this section [amending sections 416, 423, and 1382c of this title] shall apply with respect to determinations made on or after the first day of the first month beginning after 30 days after the date of the enactment of this Act [Oct. 9, 1984]."

Section 9(b)(2) of Pub. L. 96-460 provided that: "The amendments made by this subsection [amending subsec. (d)(5) of this section] shall apply to determinations made on or after the date of the enactment of this Act [Oct. 9, 1984]."

Amendment by sections 2661 and 2662 of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2684(a) of Pub. L. 98-369, set out as a note under section 401 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

Effective Date of 1983 Amendment

Amendment by section 309(o) of Pub. L. 98-21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 96-21, set out as a note under section 402 of this title.

Amendment by section 332(b) of Pub. L. 98-21 effective with respect to applications for disability insurance benefits under this section filed after Apr. 20, 1983, except that no monthly benefits under this subchapter shall be payable or increased by reason of such amendment for months before the month following April, 1983, see section 332(c) of Pub. L. 98-21, set out as a note under section 418 of this title.

Amendment by section 339(b) of Pub. L. 98-21 applicable with respect to monthly benefits payable for months beginning on or after April 20, 1983, see section 339(c) of Pub. L. 98-21, set out as a note under section 402 of this title.

Election of Payments

Section 2(e) of Pub. L. 98-460 provided that: "Any individual whose case is remanded to the Secretary pursuant to subsection (d) [set out as a note above] or whose request for a review is made in a timely manner pursuant to subsection (d), may elect, in accordance with section 223(g) or 1631(a)(7) of the Social Security Act [42 U.S.C. 423(g) or 1383(a)(7)], to have payments made beginning with the month in which he makes such election, and ending as under such section 223(g) or 1631(a)(7). Notwithstanding such section 223(g) or 1631(a)(7), such payments (if elected)—

"(1) shall be made at least until an initial redetermination is made by the Secretary; and

"(2) shall begin with the payment for the month in which such individual makes such election."

RETROACTIVE BENEFITS

Section 2(f) of Pub. L. 98-460 provided that: "In the case of any individual who is found to be under a disability after a review required under this section, such individual shall be entitled to retroactive benefits beginning with benefits payable for the first month to which the most recent termination of benefits applied."

PROMULGATION OF REGULATIONS

Section 2(g) of Pub. L. 98-460 provided that: "The Secretary of Health and Human Services shall prescribe regulations necessary to implement the amendments made by this section [amending sections 416, 423, and 1382c of this title and enacting provisions set out as notes under section 423 of this title] not later than 180 days after the date of the enactment of this Act [Oct. 9, 1984]."

COMMISSION ON EVALUATION OF PAIN

Section 3(b) of Pub. L. 98-480 provided that:

"(1) The Secretary of Health and Human Services shall appoint a Commission on the Evaluation of Pain (hereafter in this section referred to as the 'Commission') to conduct a study concerning the evaluation of pain in determining under titles II and XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.] whether an individual is under a disability. Such study shall be conducted in consultation with the National Academy of Selences.

"(2) The Commission shall consist of at least twelve experts, including a significant representation from the field of medicine who are involved in the study of pain, and representation from the fields of law, administration of disability insurance programs, and other appropriate fields of expertise.

"(3) The Commission shall be appointed by the Secretary of Health and Human Services (without regard to the requirements of the Federal Advisory Committee Act [Pub. L. 92-463, set out in the Appendix to Title 5, Government Organization and Employees]) within 60 days after the date of the enactment of this Act [Oct. 9, 1984]. The Secretary shall from time to time appoint one of the members to serve as Chairman. The Commission shall meet as often as the Secretary deems necessary.

"(4) Members of the Commission shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Members who are not employees of the United States, while attending meetings of the Commission or otherwise serving on the business of the Commission, shall be paid at a rate equal to the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day, including traveltime, during which they are engaged in the actual performance of duties vested in the Commission. While engaged in the performance of such duties away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(5) The Commission may engage such technical assistance from individuals skilled in medical and other aspects of pain as may be necessary to carry out its functions. The Secretary shall make available to the Commission such secretarial, clerical, and other assistance and any pertinent data prepared by the Department of Health and Human Services as the Commission may require to carry out its functions.

"(6) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than December 31, 1985. The Commission shall terminate at the time such results are submitted."

STUDY AND REPORT TO CONGRESSIONAL COMMITTEES ON EFFECT OF CONTINUED PAYMENT OF DISABILITY BENEFITS DURING APPEAL ON TRUST FUND EXPENDITURES AND THE RATE OF APPEALS

Section 7(c) of Pub. L. 98-460 provided that:

"(1) The Secretary of Health and Human Services shall, as soon as practicable after the dato of the enactment of this Act [Oct. 9, 1984], conduct a study concerning the effect which the enactment and continued operation of section 223(g) of the Social Security Act [42 U.S.C. 423(g)] is having on expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund, and the rate of appeals to administrative law judges of unfavorable determinations relating to disability or periods of disability.

"(2) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1986."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 401, 402, 403, 405, 409, 415, 416, 421, 422, 424a, 425, 426, 1320b-1, 1382c, 1395p, 1395r, 1395s, 1437a, 6862 of this title; title 5 sections 8116, 8452; title 28 sections 401, 3121; title 30 sections 902, 922, 923; title 45 sections 231a, 231b, 231c, 231f.

§ 424a. Reduction of disability benefits

(a) Conditions for reduction; computation

If for any month prior to the month in which an individual attains the age of 65—

(1) such individual is entitled to benefits under section 423 of this title, and

(2) such individual is entitled for such month to—

(A) periodic benefits on account of his or her total or partial disability (whether or not permanent) under a workmen's compensation law or plan of the United States or a State, or

(B) periodic benefits on account of his or her total or partial disability (whether or not permanent) under any other law or plan of the United States, a State, a political subdivision (as that term is used in section 418(b)(2) of this title), or an instrumentality of two or more States (as that term is used in section 418(g) of this title), other than (i) benefits payable under title 38, (ii) benefits payable under a program of assistance which is based on need, (iii) benefits based on service all or substantially all of which was included under an agreement entered into by a State and the Secretary under section 418 of this title, and (iv) benefits under a law or plan of the United States based on service all or substantially all of which is employment as defined in section 410 of this title,

the total of his benefits under section 423 of this title for such month and of any benefits under section 402 of this title for such month based on his wages and self-employment income shall be reduced (but not below zero) by the amount by which the sum of—

[*See main edition for text of (3) and (4)*]

exceeds the higher of—

[*See main edition for text of (5) and (6)*]

In no case shall the reduction in the total of such benefits under sections 423 and 402 of this title for a month (in a continuous period of months) reduce such total below the sum of—

[*See main edition for text of (7) and (8)*]

For purposes of clause (5), an individual's average current earnings means the largest of (A) the average monthly wage (determined under section 415(b) of this title as in effect prior to January 1979) used for purposes of computing his benefits under section 423 of this title, (B) one-sixtieth of the total of his wages and self-employment income (computed without regard to the limitations specified in sections 409(a) and 411(b)(1) of this title) for the five consecutive calendar years after 1950 for which such wages and self-employment income were highest, or (C) one-twelfth of the total of his wages and self-employment income (computed without regard to the limitations specified in sections 409(a) and 411(b)(1) of this title) for the calendar year in which he had the highest such wages and income during the period consisting of the calendar year in which he became disabled (as defined in section 423(d) of this title) and the five years preceding that year.

[*See main edition for text of (b) to (h)*]

(As amended Apr. 7, 1986, Pub. L. 99-272, title XII, § 12109(a), 100 Stat. 286; Oct. 21, 1986, Pub. L. 99-509, title IX, § 9002(c)(2)(F), 100 Stat. 1972.)

AMENDMENTS

1986—Subsec. (a)(2). Pub. L. 99-272, § 12109(a)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "such individual is entitled for such month to periodic benefits on account of such individual's total or partial disability (whether or not permanent) under—

"(A) a workmen's compensation law or plan of the United States or a State, or

"(B) any other law or plan of the United States, a State, a political subdivision (as that term is used in section 418(b)(2) of this title), or an instrumentality of two or more States (as that term is used in section 418(k) of this title),

other than benefits payable under title 38, benefits payable under a program of assistance which is based on need, benefits based on service all, or substantially all, of which was included under an agreement entered into by a Stato and the Secretary under section 418 of this title, and benefits under a law or plan of the Unitod States based on service all or part of which is employment as defined in section 410 of this title,".

Subsec. (a)(2)(B). Pub. L. 99-509 substituted "section 418(g)" for "section 418(k)".

Pub. L. 99-272, § 12109(a)(2), substituted "all or substantially all of which" for "all or part of which" in cl. (iv).

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99-509 effective with respect to payments due with respect to wages paid after Dec. 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to section 418(e)(2) of this title prior to Oct. 21, 1986, with certain exceptions, see section 9002(d) of Pub. L. 99-509 set out as a note under section 418 of this title.

Section 12109(b) of Pub. L. 99-272 provided that:

"(1) The amendment made by subsection (a)(1) [amending this section] shall be effective as though it had been included or reflected in the amendment made by section 2208(a)(3) of the Omnibus Budget Reconciliation Act of 1981 [Pub. L. 97-35, amending this section].

"(2) The amendment made by subsection (a)(2) [amending this section] shall apply only with respect to monthly benefits payable on the basis of the wages and self-employment income of individuals who become disabled (within the meaning of section 223(d) of the Social Security Act [42 U.S.C. 423(d)]) after the month in which this Act is enacted [April 1986]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 403, 415 of this title; title 5 sections 8116, 8349, 8452; title 26 sections 86, 6050F; title 30 section 922.

§ 425. Benefits based on disability

(a) Suspension of benefits

If the Secretary, on the basis of information obtained by or submitted to him, believes that an individual entitled to benefits under section 423 of this title, or that a child who has attained the age of eighteen and is entitled to benefits under section 402(d) of this title, or that a widow or surviving divorced wife who has not attained age 60 and is entitled to benefits under section 402(e) of this title, or that a widower or surviving divorced husband who has not attained age 60 and is entitled to benefits under section 402(f) of this title, may have ceased to be under a disability, the Secretary may suspend the payment of benefits under such section 402(d), 402(e), 402(f) or 423 of this title until it is determined (as provided in section 421 of this title) whether or not such individual's disability has ceased or until the Secretary believes that such disability has not ceased. In the case of any individual whose disability is subject to determination under an agreement with a State under section 421(b) of this title, the Secretary shall promptly notify the appropriate State of his action under this subsection and shall request a prompt detormination of whether such individual's disability has ceased. For purposes of this subsection, the term "disability" has the meaning assigned to such term in section 423(d) of this title. Whenever the benefits of an individual entitled to a disability insurance benefit are suspended for any month, the benefits of any individual entitled thereto under subsection (b), (c), or (d) of section 402 of this title, on the basis of the wages and self-employment income of such individual, shall be suspended for such month. The first sentence of this subsection shall not apply to any child entitled to benefits under section 402(d) of this title, if he has attained the age of 18 but has not attained the age of 22, for any month during which he is a full-time student (as defined and determined under section 402(d) of this title).

[*See main edition for text of (b)*]

(As amended Apr. 20, 1983, Pub. L. 98-21, title III, § 309(p), 97 Stat. 117.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-21 inserted "or surviving divorced husband" after "widower".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 98-21, set out as a note under section 402 of this title.

PAYMENT OF COSTS OF REHABILITATION SERVICES

Amendment of sections 422 and 1382d of this title by section 11(a), (b) of Pub. L. 98-460 applicable with respect to individuals who receive benefits as a result of section 425(b) or section 1383(a)(6) of this title, or who refuse to continue te accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after the first month following October 1984, see section 11(c) of Pub. L. 98-460, set out as an Effective Date of 1984 Amendment note under section 422 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 416, 422 of this title.

§ 426. Entitlement to hospital insurance benefits

(a) Individuals over 65 years

Every individual who—

[*See main edition for text of (1)*]

(2) [*See main edition for text of (A) and (B)*]

(C)(i) would meet the requirements of subparagraph (A) upon filing application for the monthly insurance benefits involved if medicare qualified government employment (as defined in section 410(p) of this title) were treated as employment (as defined in section 410(a) of this title) for purposes of this subchapter, and (ii) files an application, in conformity with regulations of the Secretary, for hospital insurance benefits under part A of subchapter XVIII of this chapter,

shall be entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter for each month for which he meets the condition specified in paragraph (1), beginning with the first month after June 1966 for which he meets the conditions specified in paragraphs (1) and (2).

(b) Individuals under 65 years

Every individual who—

[*See main edition for text of (1)*]

(2) [*See main edition for text of (A) and (B)*]

(C)(i) has filed an application, in conformity with regulations of the Secretary, for hospital insurance benefits under part A of subchapter XVIII of this chapter pursuant to this subparagraph, and

(ii) would meet the requirements of subparagraph (A) (as determined under the disability criteria, including reviews, applied under this subchapter), including the requirement that he has been entitled to the specified benefits for 24 months, if—

(I) medicare qualified government employment (as defined in section 410(p) of this title) were treated as employment (as defined in section 410(a) of this title) for purposes of this subchapter, and

[*See main edition for text of (II)*]

shall be entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter for each month beginning with the later of (I) July 1973 or (II) the twenty-fifth month of his entitlement or status as a qualified railroad retirement beneficiary described in paragraph (2), and ending (subject to the last sentence of this subsection) with the month following the month in which notice of termination of such entitlement to benefits or status as a qualified railroad retirement beneficiary described in paragraph (2) is mailed to him, or if earlier, with the month before the month in which he attains age 65. In applying the previous sentence in the case of an individual described in paragraph (2)(C), the "twenty-fifth month of his entitlement" refers to the first month after the twenty-fourth month of entitlement to specified benefits referred to in paragraph (2)(C) and "notice of termination of such entitlement" refers to a notice that the individual would no longer be determined to be entitled to such specified benefits under the conditions described in that paragraph. For purposes of this subsection, an individual who has had a period of trial work which ended as provided in section 422(c)(4)(A) of this title, and whose entitlement to benefits or status as a qualified railroad retirement beneficiary as described in paragraph (2) has subsequently terminated, shall be deemed to be entitled to such benefits or to occupy such status (notwithstanding the termination of such entitlement or status) for the period of consecutive months throughout all of which the physical or mental impairment, on which such entitlement or status was based, continues, and throughout all of which such individual would have been entitled to monthly insurance benefits under this subchapter or as a qualified railroad retirement beneficiary had such individual been unable to engage in substantial gainful activity, but not in excess of 24 such months.

[*See main edition for text of (c) and (d)*]

(e) Benefits for widows and widowers

(1) For purposes of determining entitlement to hospital insurance benefits under subsection (b) of this section in the case of widows and widowers described in paragraph (2)(A)(iii) thereof—

(A) the term "age 60" in sections 402(e)(1)(B)(ii), 402(e)(4), 402(f)(1)(B)(ii), and 402(f)(5) of this title shall be deemed to read "age 65"; and

[*See main edition for text of (B), (2)*]

(3) For purposes of determining entitlement to hospital insurance benefits under subsection (b) of this section, any disabled widow aged 50 or older who is entitled to mother's insurance benefits (and who would have been entitled to widow's insurance benefits by reason of disability if she had filed for such widow's benefits),

and any disabled widower aged 50 or older who is entitled to father's insurance benefits (and who would have been entitled to widower's insurance benefits by reason of disability if he had filed for such widower's benefits), shall, upon application for such hospital insurance benefits be deemed to have filed for such widow's or widower's insurance benefits.

[*See main edition for text of (4); (f)*]

(g) Information regarding eligibility of Federal employees

The Secretary and Director of the Office of Personnel Management shall jointly prescribe and carry out procedures designed to assure that all individuals who perform medicare qualified government employment by virtue of service described in section 410(a)(5) of this title are fully informed with respect to (1) their eligibility or potential eligibility for hospital insurance benefits (based on such employment) under part A of subchapter XVIII of this chapter, (2) the requirements for and conditions of such eligibility, and (3) the necessity of timely application as a condition of entitlement under subsection (b)(2)(C) of this section, giving particular attention to individuals who apply for an annuity under chapter 83 [1] of title 5 or under another similar Federal retirement program, and whose eligibility for such an annuity is or would be based on a disability.

[*See main edition for text of (h)*]

(As amended Apr. 20, 1983, Pub. L. 98-21, title I, § 131(a)(3)(H), (b)(3)(G), title III, § 309(q)(1), 97 Stat. 93, 117; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(a)(17), 98 Stat. 1165; Apr. 7, 1986, Pub. L. 99-272, title XIII, § 13205(b)(2)(A), (C)(ii), 100 Stat. 317.)

REFERENCES IN TEXT

Parts A and C of subchapter XVIII of this chapter, referred to in text, are classified to section 1395c et seq. and 1395x et seq., respectively, of this title.

AMENDMENTS

1986—Subsec. (a)(2)(C)(i). Pub. L. 99-272, § 13205(b)(2)(A) substituted "medicare qualified government employment" for "medicare qualified Federal employment".

Subsec. (b)(2)(C)(ii)(I). Pub. L. 99-272, § 13205(b)(2)(A), substituted "medicare qualified government employment" for "medicare qualified Federal employment".

Subsec. (g). Pub. L. 99-272, § 13205(b)(2)(C)(ii), substituted "medicare qualified government employment by virtue of service described in section 410(a)(5) of this title" for "medicare qualified Federal employment".

1984—Subsec. (b). Pub. L. 98-369 substituted "part A" for "part (A)" in provisions following par. (2)(C).

1983—Subsec. (e)(1)(A). Pub. L. 98-21, § 131(a)(3)(H), (b)(3)(G), substituted reference to section 402(e)(4), (f)(5) of this title for reference to section 405(e)(5), (f)(6) of this title.

Subsec. (e)(3). Pub. L. 98-21, § 309(q)(1), amended par. (3) generally, inserting provisions relating to any disabled widower and striking out provision that a disabled widow, upon furnishing proof of such disability prior to July 1, 1974, under such procedures as the Secretary prescribed, would be deemed to have been entitled to such widow's benefits as of the time she would have been entitled to such widow's benefits if she had filed a timely application therefor.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 effective after Mar. 31, 1986, with no individual to be considered under disability for any period beginning before Apr. 1, 1986, for purposes of hospital insurance benefits, see section 13205(d)(2) of Pub. L. 99-272, set out as a noto under section 410 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by section 131 of Pub. L. 98-21 effective with respect to monthly benefits payable under this subehapter for months after December 1983, and in the case of an individual who was not entitled to a monthly benefit of the type involved under this subchapter for December 1983, no benefit shall be paid under this subehapter by reason of such amendments unless proper application for such benefit is made, sec section 131(d) of Pub. L. 98-21 set out as a note under section 402 of this title.

Amendment by section 309(q)(1) of Pub. L. 98-21 applicable only with respect to monthly payments payable under this subchapter for months after April 1983, see section 310 of Pub. L. 96-21, set out as a note under section 402 of this title.

TIME IN WHICH TO FURNISH PROOF OF DISABILITY FOR HOSPITAL BENEFITS

Section 309(q)(2) of Pub. L. 98-21 provided that: "For purposes of determining entitlement to hospital insurance benefits under section 226(e)(3) of such Act [subsec. (e)(3) of this section], as amended by paragraph (1), an individual becoming entitled to such hospital insurance benefits as a result of the amendment made by such paragraph shall, upon furnishing proof of his or her disability within twelve months after the month in which this Act is enacted [April, 1983], under such procedures as the Secretary of Health and Human Services may prescribe, be deemed to have been entitled to the widow's or widower's benefits referred to in such section 226(e)(3), as so amended, as of the time such individual would have been entitled to such widow's or widower's benefits if he or she had filed a timely application therefor."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 401, 410, 418, 426, 426-1, 426a, 433, 1320b-1, 1395c, 1395f, 1395h, 1395i-1, 1395i-2, 1395p, 1395u, 1395y, 1395ff of this title; title 45 sections 231f, 231r.

§ 426-1. End stage renal disease program

(a) Entitlement to benefits

Notwithstanding any provision to the contrary in section 426 of this title or subchapter XVIII of this chapter, every individual who—

(1)(A) is fully or currently insured (as such terms are defined in section 414 of this title), or would be fully or currently insured if (i) his service as an employee (as defined in the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.]) after December 31, 1936, were included within the meaning of the term "em-

[1] So in original. Probably should be "subchapter III of chapter 83".

ployment" for purposes of this subchapter, and (ii) his medicare qualified government employment (as defined in section 410(p) of this title) were included within the meaning of the term employment for purposes of this subchapter;

(B)(i) is entitled to monthly insurance benefits under this subchapter, (ii) is entitled to an annuity under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], or (iii) would be entitled to a monthly insurance benefit under this subchapter if medicare qualified government employment (as defined in section 410(p) of this title) were included within the meaning of the term "employment" for purposes of this subchapter; or

[*See main edition for text of (C), (2) and (3)*]

shall, in accordance with the succeeding provisions of this section, be entitled to benefits under part A and eligible to enroll under part B of subchapter XVIII of this chapter, subject to the deductible, premium, and coinsurance provisions of that subchapter.

[*See main edition for text of (b) and (c)*]

(As amended Apr. 7, 1986, Pub. L. 99-272, title XIII, § 13205(b)(2)(B), 100 Stat. 317.)

AMENDMENTS

1986—Subsec. (a)(1)(A)(ii), (B)(iii). Pub. L. 99-272 substituted "medicare qualified government employment" for "medicare qualified Federal employment".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 effective after Mar. 31, 1986, with no individual to be considered under disability for any period beginning before Apr. 1, 1986, for purposes of hospital insurance benefits, see section 13205(d)(2) of Pub. L. 99-272, set out as a note under section 410 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 410, 418, 1395c, 1395y, 1395rr of this title.

§ 427. Transitional insured status for purposes of old-age and survivors benefits

(a) Determination of entitlement to benefits under section 402(a) to (c) of this title

In the case of any individual who attains the age of 72 before 1969 but who does not meet the requirements of section 414(a) of this title, the 6 quarters of coverage referred to in paragraph (1) of section 414(a) of this title shall, instead, be 3 quarters of coverage for purposes of determining entitlement of such individual to benefits under section 402(a) of this title, and of the spouse to benefits under section 402(b) or section 402(c) of this title, but, in the case of such spouse, only if he or she attains the age of 72 before 1969 and only with respect to spouse's insurance benefits under section 402(b) or section 402(c) of this title for and after the month in which he or she attains such age. For each month before the month in which any such individual meets the requirements of section 414(a) of this title, the amount of the old-age insurance benefit shall, notwithstanding the provisions of section 402(a) of this title, be the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title and the amount of the spouse's insurance benefit of the spouse shall, notwithstanding the provisions of section 402(b) or section 402(c) of this title, be the larger of $32.20 or the amount most recently established in lieu thereof under section 415(l) of this title.

(b) Determination of entitlement to surviving spouse's benefits under section 402(e) or (f) of this title

In the case of any individual who has died, who does not meet the requirements of section 414(a) of this title, and whose surviving spouse attains age 72 before 1969, the 6 quarters of coverage referred to in paragraph (3) of section 414(a) of this title and in paragraph (1) thereof shall, for purposes of determining the entitlement to surviving spouse's insurance benefits under section 402(e) or section 402(f) of this title, instead be—

(1) 3 quarters of coverage if such surviving spouse attains the age of 72 in or before 1966,

(2) 4 quarters of coverage if such surviving spouse attains the age of 72 in 1967, or

(3) 5 quarters of coverage if such surviving spouse attains the age of 72 in 1968.

The amount of the surviving spouse's insurance benefit for each month shall, notwithstanding the provisions of section 402(e) or section 402(f) of this title (and section 402(m) of this title), be the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title.

(c) Deceased individual entitled to benefits by reason of subsec. (a) deemed to meet requirements of subsec. (b)

In the case of any individual who becomes, or upon filing application therefor would become, entitled to benefits under section 402(a) of this title by reason of the application of subsection (a) of this section, who dies, and whose surviving spouse attains the age of 72 before 1969, such deceased individual shall be deemed to meet the requirements of subsection (b) of this section for purposes of determining entitlement of such surviving spouse to surviving spouse's insurance benefits under section 402(e) or section 402(f) of this title.

(As amended Apr. 20, 1983, Pub. L. 98-21, title III, § 304(a), (b), 97 Stat. 112.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-21, § 304(a), substituted "spouse" for "wife", "spouse's" for "wife's", and "he or she" for "she", wherever appearing, substituted "the" for "his" after "402(a) of this title, and of" and preceding "spouse" in tw places and preceding "old-age insurance", and inserted "or section 402(c)" after "section 402(b)" wherever appearing.

Subsec. (b). Pub. L. 98-21, § 304(b), substituted "surviving spouse" for "widow" and "surviving spouse's" for "widow's" wherever appearing, substituted "the" for "her" after "determining" and "The amount of", and inserted "or section 402(f)" after "section 402(e)" wherever appearing.

Subsec. (c). Pub. L. 98-21, § 304(b)(1), (2), (4), substituted "surviving spouse" for "widow" wherever appearing and "surviving spouse's" for "widow's", and inserted "or section 402(f)" after "section 402(e)".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 98-21 set out as a note under section 402 of this title.

§ 428. Benefits at age 72 for certain uninsured individuals

(a) Eligibility

Every individual who—

(1) has attained the age of 72,

(2)(A) attained such age before 1968, or (B) has not less than 3 quarters of coverage, whenever acquired, for each calendar year elapsing after 1966 and before the year in which he or she attained such age,

(3) is a resident of the United States (as defined in subsection (e) of this section), and is (A) a citizen of the United States or (B) an alien lawfully admitted for permanent residence who has resided in the United States (as defined in section 410(i) of this title) continuously during the 5 years immediately preceding the month in which he or she files application under this section, and

(4) has filed application for benefits under this section,

shall (subject to the limitations in this section) be entitled to a benefit under this section for each month beginning with the first month after September 1966 in which he or she becomes so entitled to such benefits and ending with the month preceding the month in which he or she dies. No application under this section which is filed by an individual more than 3 months before the first month in which he or she meets the requirements of paragraphs (1), (2), and (3) shall be accepted as an application for purposes of this section.

(b) Amount of benefits

The benefit amount to which an individual is entitled under this section for any month shall be the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title.

(c) Reduction for government pension system benefits

(1) The benefit amount of any individual under this section for any month shall be reduced (but not below zero) by the amount of any periodic benefit under a governmental pension system for which he or she is eligible for such month.

(2) In the case of a husband and wife only one of whom is entitled to benefits under this section for any month, the benefit amount, after any reduction under paragraph (1), shall be further reduced (but not below zero) by the excess (if any) of (A) the total amount of any periodic benefits under governmental pension systems for which the spouse who is not entitled to benefits under this section is eligible for such month, over (B) the benefit amount as determined without regard to this subsection.

(3) In the case of a husband or wife both of whom are entitled to benefits under this section for any month, the benefit amount of each spouse, after any reduction under paragraph (1), shall be further reduced (but not below zero) by the excess (if any) of (A) the total amount of any periodic benefits under governmental pension systems for which the other spouse is eligible for such month, over (B) the benefit amount of such other spouse as determined without regard to this subsection.

(4) For purposes of this subsection, in determining whether an individual is eligible for periodic benefits under a governmental pension system—

(A) such individual shall be deemed to have filed application for such benefits,

(B) to the extent that entitlement depends on an application by such individual's spouse, such spouse shall be deemed to have filed application, and

(C) to the extent that entitlement depends on such individual or his or her spouse having retired, such individual and his or her spouse shall be deemed to have retired before the month for which the determination of eligibility is being made.

[*See main edition for text of (5) to (8); (d) to (f)*]

(g) Annual reimbursement of Federal Old-Age and Survivors Insurance Trust Fund

There are authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for the fiscal year ending June 30, 1969, and for each fiscal year thereafter, such sums as the Secretary deems necessary on account of—

[*See main edition for text of (1) to (3)*]

in order to place such Trust Fund in the same position at the end of such fiscal year as it would have been in if such payments had not been made.

[*See main edition for text of (h)*]

(Aug. 14, 1935, ch. 531, title II, § 228, as added Mar. 15, 1966, Pub. L. 89-368, title III, § 302(a), 80 Stat. 67, and amended Jan. 2, 1968, Pub. L. 90-248, title I, § 102(b), title II, § 241(a) 81 Stat. 827, 916; Dec. 30, 1969, Pub. L. 91-172, title X, § 1003(b), 83 Stat. 740; Mar. 17, 1971, Pub. L. 92-5, title II, § 202(b), 85 Stat. 10; July 1, 1972, Pub. L. 92-336, title II, § 201(g)(2), 86 Stat. 411; Dec. 31, 1973, Pub. L. 93-233, §§ 2(b)(1), 18(c), 87 Stat. 952, 968; Apr. 20, 1983, Pub. L. 98-21, title III, § 305(a)-(d), 97 Stat. 113; July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2662(e), 2663(j)(3)(A)(iv), 98 Stat. 1159, 1170.)

AMENDMENTS

1984—Subsec. (c)(4)(C). Pub. L. 98-369, § 2662(e), amended directory language of Pub. L. 98-21, § 305(d)(2). See 1983 Amendment note below.

Subsec. (g). Pub. L. 98-369, § 2663(j)(3)(A)(iv), struck out "of Health, Education, and Welfare" after "Secretary".

1983—Subsec. (a). Pub. L. 98-21, § 305(d)(1), substituted "he or she" for "he" wherever appearing.

Subsec. (b). Pub. L. 98-21, § 305(a), substituted "The" for "(1) Except as provided in paragraph (2), the" and struck out par. (2), which had provided that if both husband and wife were entitled or would have been entitled upon application to benefits under this section for any month, the amount of the husband's

benefit for such month would be the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title, and the amount of the wife's benefit for such month the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title.

Subsec. (c)(1). Pub. L. 98-21, § 305(d)(1), substituted "he or she" for "he".

Subsec. (c)(2). Pub. L. 98-21, § 305(b), substituted "(B) the benefit amount as determined without regard to this subsection" for "(B) the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title".

Subsec. (c)(3). Pub. L. 98-21, § 305(c), amended par. (3) generally, substituting provisions relating to either a husband or wife for provision that the benefit amount of the wife, after any reduction under paragraph (1), would be further reduced (but not below zero) by the excess (if any) of (i) the total amount of any periodic benefits under governmental pension systems for which the husband was eligible for such month, over (ii) the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title, and that the benefit amount of the husband, after any reduction under paragraph (1), would be further reduced (but not below zero) by the excess (if any) of (i) the total amount of any periodic benefits under governmental pension systems for which the wife was eligible for such month, over (ii) the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title.

Subsec. (c)(4)(C). Pub. L. 98-21, § 305(d)(2), as amended by Pub. L. 98-369, § 2662(e), substituted "his or her" for "his" wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2662 of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2664(a) of Pub. L. 98-369, set out as a note under section 401 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 98-21, set out as a note under section 402 of this title.

INCREASES TO TAKE INTO ACCOUNT GENERAL BENEFIT INCREASES

Section 305(e) of Pub. L. 98-21 provided that: "The Secretary shall increase the amounts specified in section 228 of the Social Security Act [this section], as amended by this section, to take into account any general benefit increases (as referred to in section 215(i)(3) of such Act [42 U.S.C. 415(i)(3)]), and any increases under section 215(i) of such Act [26 U.S.C. 415(i)], which have occurred after June 1974 or may hereafter occur."

§ 429. Benefits in case of members of the uniformed services

[*See main edition for text of* (a)]

(b) There are authorized to be appropriated to each of the Trust Funds, consisting of the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund, for transfer on July 1 of each calendar year to such Trust Fund from amounts in the general fund in the Treasury not otherwise appropriated, an amount equal to the total of the additional amounts which would be appropriated to such Trust Fund for the fiscal year ending September 30 of such calendar year under section 401 or 1395i of this title if the amounts of the additional wages deemed to have been paid for such calendar year by reason of subsection (a) of this section constituted remuneration for employment (as defined in section 3121(b) of the Internal Revenue Code of 1986) for purposes of the taxes imposed by sections 3101 and 3111 of the Internal Revenue Code of 1986. Amounts authorized to be appropriated under this subsection for transfer on July 1 of each calendar year shall be determined on the basis of estimates of the Secretary of the wages deemed to be paid for such calendar year under subsection (a) of this section; and proper adjustments shall be made in amounts authorized to be appropriated for subsequent transfer to the extent prior estimates were in excess of or were less than such wages so deemed to be paid. Additional adjustments may be made in the amounts so authorized to be appropriated to the extent that the amounts transferred in accordance with clauses (i) and (ii) of section 151(b)(3)(B) of the Social Security Amendments of 1983 with respect to wages deemed to have been paid in 1983 were in excess of or were less than the amount which the Secretary, on the basis of appropriate data, determines should have been so transferred.

(As amended Apr. 20, 1983, Pub. L. 98-21, title I, § 151(b)(1), 97 Stat. 104; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2661(n), 98 Stat. 1158; Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095.)

REFERENCES IN TEXT

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

Section 151(b)(3)(B) of the Social Security Amendments of 1983, referred to in subsec. (b), is section 151(b)(3)(B) of Pub. L. 98-21, which is set out as a note below.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1984—Subsec. (b). Pub. L. 98-369 inserted at end "Additional adjustments may be made in the amounts so authorized to be appropriated to the extent that the amounts transferred in accordance with clauses (i) and (ii) of section 151(b)(3)(B) of the Social Security Amendments of 1983 with respect to wages deemed to have been paid in 1983 were in excess of or were less than the amount which the Secretary, on the basis of appropriate data, determines should have been so transferred."

1983—Subsec. (b). Pub. L. 98-21 amended subsec. (b) generally, substituting provisions relating to authorization of appropriations to each of the Trust Funds for transfer on July 1 of each calendar year for provision that had authorized appropriations to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund annually, as benefits under this subchapter and part A of subchapter XVIII of this chapter were paid after December 1967,

such sums as the Secretary determined to be necessary to meet (1) the additional costs, resulting from subsec. (a), of such benefits (including lump-sum death payments), (2) the additional administrative expenses resulting therefrom, and (3) any loss in interest to such trust funds resulting from the payment of such amounts, and that such additional costs would be determined after any increases in such benefits arising from the application of section 417 of this title had been made.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2664(a) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 151(b)(2) of Pub. L. 98-21 provided that: "The amendment made by paragraph (1) [amending subsec. (b) of this section] shall be effective with respect to wages deemed to have been paid for calendar years after 1983."

COMPENSATORY PAYMENTS TO TRUST FUNDS

Section 151(b)(3) of Pub. L. 98-21, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(A) Within thirty days after the date of the enactment of this Act [Apr. 20, 1983], the Secretary of Health and Human Services shall determine the additional amounts which would have been appropriated to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund under sections 201 and 1817 of the Social Security Act [42 U.S.C. 401, 1395i] if the additional wages deemed to have been paid under section 229(a) of the Social Security Act [42 U.S.C. 429(a)] prior to 1984 had constituted remuneration for employment (as defined in section 3121(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 3121(b)]) for purposes of the taxes imposed by sections 3101 and 3111 of the Internal Revenue Code of 1986 [26 U.S.C. 3101, 3111], and the amount of interest which would have been earned on such amounts if they had been so appropriated.

"(B)(i) Within thirty days after the date of the enactment of this Act [Apr. 20, 1983], the Secretary of the Treasury shall transfer to each such Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, an amount equal to the amount determined with respect to such Trust Fund under subparagraph (A), less any amount appropriated to such Trust Fund pursuant to the provisions of section 229(b) of the Social Security Act [42 U.S.C. 429(b)] prior to the date of the determination made under subparagraph (A) with respect to wages deemed to have been paid for calendar years prior to 1984.

"(ii) The Secretary of Health and Human Services shall revise the amount determined under clause (i) with respect to each such Trust Fund within one year after the date of the transfer made to such Trust Fund under clause (i), as determined appropriate by such Secretary from data which becomes available to him after the date of the transfer under clause (i). Within 30 days after any such revision, the Secretary of the Treasury shall transfer to such Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, or from such Trust Fund to the general fund of the Treasury, such amounts as the Secretary of Health and Human Services certifies as necessary to take into account such revision."

§ 430. Adjustment of the contribution and benefit base

(a) Determination and publication by Secretary in Federal Register subsequent to cost-of-living benefit increase; effective date

Whenever the Secretary pursuant to section 415(i) of this title increases benefits effective with the December following a cost-of-living computation quarter, he shall also determine and publish in the Federal Register on or before November 1 of the calendar year in which such quarter occurs the contribution and benefit base determined under subsection (b) or (c) of this section which shall be effective with respect to remuneration paid after the calendar year in which such quarter occurs and taxable years beginning after such year.

[*See main edition for text of* (b)]

(c) Amount of base for period prior to initial cost-of-living benefit increase

For purposes of this section, and for purposes of determining wages and self-employment income under sections 409, 411, 413, and 415 of this title and sections 1402, 3121, 3122, 3125, 6413, and 6654 of the Internal Revenue Code of 1986, (1) the "contribution and benefit base" with respect to remuneration paid in (and taxable years beginning in) any calendar year after 1973 and prior to the calendar year with the June of which the first increase in benefits pursuant to section 415(i) of this title becomes effective shall be $13,200 or (if applicable) such other amount as may be specified in a law enacted subsequent to the law which added this section, and (2) the "contribution and benefit base" with respect to remuneration paid (and taxable years beginning)—

(A) in 1978 shall be $17,700,

(B) in 1979 shall be $22,900,

(C) in 1980 shall be $25,900, and

(D) in 1981 shall be $29,700.

For purposes of determining under subsection (b) of this section the "contribution and benefit base" with respect to remuneration paid (and taxable years beginning) in 1982 and subsequent years, the dollar amounts specified in clause (2) of the preceding sentence shall be considered to have resulted from the application of such subsection (b) of this section and to be the amount determined (with respect to the years involved) under that subsection.

[*See main edition for text of* (d)]

(As amended Apr. 20, 1983, Pub. L. 98-21, title I, § 111(a)(5), 97 Stat. 72; Aug. 12, 1083, Pub. L. 98-76, title II, §§ 211(d), 225(a)(4), 97 Stat. 419, 425; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(a)(18), 98 Stat. 1165; Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095.)

REFERENCES IN TEXT

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

AMENDMENTS

1986—Subsec. (c). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1984—Subsec. (c). Pub. L. 98-369, in last sentence which was repealed by Pub. L. 98-76, substituted "3(a) or 3(f)(3)" for "3(a) or (3)(f)(3)" in the original, which had been translated as "section 231b(a) or (f)(3) of title 45".

1983—Subsec. (a). Pub. L. 98-21 substituted "December" for "June".

Subsec. (c). Pub. L. 98-76, § 225(a)(4), struck out provision that for purposes of determining employee and employer tax liability under sections 3201(a) and 3221(a) of the Internal Revenue Code of 1954, for purposes of determining the portion of the employee representative tax liability under section 3211(a) of such Code which resulted from the application of the 12.75 percent rate specified therein, and for purposes of computing average monthly compensation under section 231b(j) of title 45, except with respect to annuity amounts determined under section 231b(a) or (f)(3) of title 45, clause (2) and the preceding sentence of this subsection shall be disregarded.

Pub. L. 98-76, § 211(d), temporarily substituted "12.75 percent" for "11.75 percent". See Effective and Termination Dates of 1983 Amendments note below.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENTS

Amendment by section 211 of Pub. L. 98-76 applicable to compensation paid for services rendered after Dec. 31, 1983, and before Jan. 1, 1985, see section 212 of Pub. L. 98-76, set out as a note under section 3201 of Title 26, Internal Revenue Code.

Amendment by section 225(a)(4) of Pub. L. 98-76 applicable to remuneration paid after Dec. 31, 1984, see section 227(a) of Pub. L. 98-76, set out as a note under section 3201 of Title 26.

Amendment by Pub. L. 98-21 applicable with respect to cost-of-living increases determined under section 415(i) of this title for years after 1982, see section 111(a)(8) of Pub. L. 98-21, set out as an Effective Date of 1983 Amendment note under section 402 of this title.

SOCIAL SECURITY CONTRIBUTION AND BENEFIT BASE

1987—By notice of the Secretary of Health and Human Services, Oct. 31, 1986, 51 F.R. 40256, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1987 is $43,800.

1986—By notice of the Secretary of Health and Human Services, Oct. 29, 1985, 50 F.R. 45559, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1986 is $42,000.

1985—By notice of the Secretary of Health and Human Services, Oct. 29, 1984, 49 F.R. 43775, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1985 is $39,600.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 403, 409, 411, 413, 415 of this title; title 5 section 8334; title 26 sections 401, 1402, 3121, 3231, 6413; title 29 section 1322.

§ 431. Benefits for certain individuals interned by United States during World War II

[*See main edition for text of (a)*]

(b) Applicability in determining entitlement to and amount of monthly benefits and lump-sum death payments, and period of disability; effect of payment of benefits by other agency or instrumentality of United States

[*See main edition for text of (1) and (2)*]

(3) Upon application for benefits, a recalculation of benefits (by reason of this section), or a lump-sum death payment on the basis of the wages and self-employment income of any individual who was an internee, the Secretary of Health and Human Services shall accept the certification of the Secretary of Defense or his designee concerning any period of time for which an internee is to receive credit under paragraph (1) and shall make a decision without regard to clause (B) of paragraph (2) of this subsection unless he has been notified by some other agency or instrumentality of the United States that, on the basis of the period for which such individual was an internee, a benefit described in clause (B) of paragraph (2) has been determined by such agency or instrumentality to be payable by it. If the Secretary of Health and Human Services has not been so notified, he shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (2) is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Secretary of Health and Human Services, and the Secretary shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by this section.

(4) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on any period for which any individual was an internee shall, at the request of the Secretary of Health and Human Services, certify to him, with respect to any individual who was an internee, such information as the Secretary deems necessary to carry out his functions under paragraph (3) of this subsection.

[*See main edition for text of (c)*]

(Aug. 14, 1935, ch. 531, title II, § 231, as added Oct. 30, 1972, Pub. L. 92-603, title I, § 142(a), 86 Stat. 1367, and amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(j)(2)(A)(iii), 98 Stat. 1170.)

AMENDMENTS

1984—Subsec. (b)(3), (4). Pub. L. 98-369 substituted "Health and Human Services" for "Health, Education, and Welfare" wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 432. Processing of tax data

The Secretary of the Treasury shall make available information returns filed pursuant to part III of subchapter A of chapter 61 of subtitle F of the Internal Revenue Code of 1986, to the Secretary for the purposes of this subchapter and subchapter XI of this chapter. The Secretary and the Secretary of the Treasury are authorized to enter into an agreement for the processing by the Secretary of information contained in returns filed pursuant to part III of subchapter A of chapter 61 of subtitle F of the Internal Revenue Code of 1986. Notwithstanding the provisions of section 6103(a) of the Internal Revenue Code of 1986, the Secretary of the Treasury shall make available to the Secretary such documents as may be agreed upon as being necessary for purposes of such processing. The Secretary shall process any withholding tax statements or other documents made available to him by the Secretary of the Treasury pursuant to this section. Any agreement made pursuant to this section shall remain in full force and effect until modified or otherwise changed by mutual agreement of the Secretary and the Secretary of the Treasury.

(As amended Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095.)

REFERENCES IN TEXT

Part III of subchapter A of chapter 61 of subtitle F of the Internal Revenue Code of 1986, referred to in text, is classified to section 6031 et seq. of Title 26, Interual Revenue Code.

AMENDMENTS

1986—Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" wherever appearing.

§ 433. International agreements

[See main edition for text of (a) to (c)]

(d) Regulations

The Secretary shall make rules and regulations and establish procedures which are reasonable and necessary to implement and administer any agreement which has been entered into in accordance with this section.

(e) Reports to Congress; effective date of agreements

[See main edition for text of (1)]

(2) Such an agreement shall become effective on any date, provided in the agreement, which occurs after the expiration of the period (following the date on which the agreement is transmitted in accordance with paragraph (1)) during which at least one Honse of the Congress has been in session on each of 60 days; except that such agreement shall not become effective if, during such period, either House of the Congress adopts a resolution of disapproval of the agreement.

(Aug. 14, 1935, ch. 531, title II, § 233, as added Dec. 20, 1977, Pub. L. 95-216, title III, § 317(a), 91 Stat. 1538, and amended Aug. I3, 1981, Pub. L. 97-35, title XXII, § 2201(b)(12), 95 Stat. 831; Apr. 20, 1983, Pub. L. 98-21, title III, § 326(a), 97 Stat. 126; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(j)(3)(A)(v), 98 Stat. 1170.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-369 struck out "of Health, Education, and Welfare" after "Secretary".

1983—Subsec. (e)(2). Pub. L. 98-21 substituted "during which at least one House of the Congress has been in session on each of 60 days" for "during which each House of the Congress has been in session on each of 90 days".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 326(b) of Pub. L. 98-21 provided that: "The amendment made by subsection (a) [amending this section] shall be effective on the date of the enactment of this Act [Apr. 20, 1083]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 402, 410, 411 of this title; title 26 sections 1401, 1402, 3101, 3111, 3121.

SUBCHAPTER III—GRANTS TO STATES FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION

§ 502. Payments to States; computation of amounts

(a) The Secretary of Labor shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Secretary of Labor under the Federal Unemployment Tax Act, such amounts as the Secretary of Labor determines to be necessary for the proper and efficient administration of such law during the fiscal year for which such payment is to be made, including 100 percent of so much of the reasonable expenditures of the State as are attributable to the costs of the implementation and operation of the immigration statns verification system described in section 1320b-7(d) of this title. The Secretary's determination shall be based on (1) the population of the State; (2) an estimate of the number of persons covered by the State law and of the cost of proper and efficient administration of such law; and (3) such other factors as the Secretary of Labor finds relevant. The Secretary of Labor shall not certify for payment under this section in any fiscal year a total amount in excess of the amount appropriated therefor for such fiscal year.

(b) Out of the sums appropriated therefor the Secretary of the Treasury shall, upon re-

ceiving a certification under subsection (a) of this section, pay, through the Fiscal Service of the Department of the Treasury and prior to audit or settlement by the General Accounting Office, to the State agency charged with the administration of such law the amount so certified.

(Aug. 14, 1935, ch. 531, title III, § 302, 49 Stat. 626; Aug. 10, 1939, ch. 666, title III, § 301, 53 Stat. 1378; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1949 Reorg. Plan No. 2, § 1, eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(b)(1), 98 Stat. 1165; Nov. 6, 1986, Pub. L. 99-603, title I, § 121(b)(3), 100 Stat. 3390.)

REFERENCES IN TEXT

The Federal Unemployment Tax Act, referred to in subsec. (a), comprised subchapter C (§§ 1600 to 1611) of chapter 9 of the Internal Revenue Code of 1939. Chapter 9 of the 1939 Code was repealed (subject to certain exceptions) by section 7851(a)(3) of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095. The Federal Unemployment Tax Act also comprises chapter 23 (§ 3301 et seq.) of the Internal Revenue Code of 1986.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1986 Code, see section 7852(b) of the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-603 inserted at end of first sentence ", including 100 percent of so much of the reasonable expenditures of the State as are attributable to the costs of the implementation and operation of the immigration status verification system described in section 1320b-7(d) of this title".

1984—Subsec. (b). Pub. L. 98-369 substituted "the Fiscal Service of the Department of the Treasury" for "the Division of Disbursement of the Treasury Department".

EFFECTIVE DATE OF 1986 AMENDMENT

Section 121(c)(2) of Pub. L. 99-603 provided that: "The amendments made by subsection (b) [enacting section 1437r of this title, amending sections 303, 502, 603, 1203, 1353, and 1396b of this title, section 2025 of Title 7, Agriculture, and section 1096 of Title 20, Education, and amending provisions set out as a Puerto Rico, Guam, and Virgin Islands note under section 1383 of this title] take effect on October 1, 1987."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 503. State laws

(a) Provisions required

The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.], includes provision for—

[*See main edition for text of (1) to (3)*]

(4) The payment of all money received in the unemployment fund of such State (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 3305(b) of the Federal Unemployment Tax Act [26 U.S.C. 3305(b)]), immediately upon such receipt, to the Secretary of the Treasury to the credit of the unemployment trust fund [1] established by section 1104 of this title; and

(5) Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305(b) of the Federal Unemployment Tax Act [26 U.S.C. 3305(b)]: *Provided*, That an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration: *Provided further*, That the amounts specified by section 1103(c)(2) of this title may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices: *Provided further*, That nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor: *Provided further*, That amounts may be deducted from unemployment benefits and used to repay overpayments as provided in subsection (g) of this section; and

[*See main edition for text of (6) to (9); (b)*]

(c) Denial of certification; availability of records to Railroad Retirement Board; cooperation with Federal agencies

The Secretary of Labor shall make no certification for payment to any State if he finds, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law—

(1) that such State does not make its records available to the Railroad Retirement Board, and furnish to the Railroad Retirement Board at the expense of the Railroad Retirement Board such copies thereof as the Railroad Retirement Board deems necessary for its purposes;

(2) that such State is failing to afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law; or

[1] So in original. Probably should be "Unemployment Trust Fund".

(3) that any interest required to be paid on advances under subchapter XII of this chapter has not been paid by the date on which such interest is required to be paid or has been paid directly or indirectly (by an equivalent reduction in State unemployment taxes or otherwise) by such State from amounts in such State's unemployment fund, until such interest is properly paid.

(d) Disclosure of unemployment compensation information; deduction and withholding of amounts owed to State food stamp agencies; reimbursement of administrative costs; non-compliance of State agency

[See main edition for text of (1)]

(2)(A) For purposes of this paragraph, the term "unemployment compensation" means any unemployment compensation payable under the State law (including amounts payable pursuant to an agreement under a Federal unemployment compensation law).

(B) The State agency charged with the administration of the State law—

(i) may require each new applicant for unemployment compensation to disclose whether the applicant owes an uncollected overissuance (as defined in section 13(c)(1) of the Food Stamp Act of 1977 [7 U.S.C. 2022(c)(1)]) of food stamp coupons,

(ii) may notify the State food stamp agency to which the uncollected overissuance is owed that the applicant has been determined to be eligible for unemployment compensation if the applicant discloses under clause (i) that the applicant owes an uncollected overissuance and the applicant is determined te be so eligible,

(iii) may deduct and withhold from any unemployment compensation otherwise payable to an individual—

(I) the amount specified by the individual to the State agency to be deducted and withheld under this clause,

(II) the amount (if any) determined pursuant to an agreement submitted to the State food stamp agency under section 13(c)(3)(A) of the Food Stamp Act of 1977 [7 U.S.C. 2022(c)(3)(A)], or

(III) any amount otherwise required to be deducted and withheld from the unemployment compensation pursuant to section 13(c)(3)(B) of such Act [7 U.S.C. 2022(c)(3)(B)], and

(iv) shall pay any amount deducted and withheld under clause (iii) to the appropriate State food stamp agency.

(C) Any amount deducted and withheld under subparagraph (B)(iii) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the State food stamp agency to which the uncollectod overissuance is owed as repayment of the individual's uncollected overissuance.

(D) A State food stamp agency to which an uncollected overissuance is owed shall reimburse the State agency charged with the administration of the State unemployment compensation law for the administrative costs incurred by the State agency under this paragraph that are attributable to repayment of uncollected overissuance to the State food stamp agency to which the uncollected overissuance is owed.

(3) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State.

(4) For purposes of this subsection, the term "State food stamp agency" means any agency described in section 3(n)(1) of the Food Stamp Act of 1977 [7 U.S.C. 2012(n)(1)] which administers the food stamp program established under such Act.

(e) Disclosure of wage information; non-compliance of State ageney

[See main edition for text of (1)]

(2)(A) The State agency charged with the administration of the State law—

(i) shall require each new applicant for unemployment compensation to disclose whether or not such applicant owes child support obligations (as defined in the last sentence of paragraph (1),

[See main edition for text of (ii) to (iv)]

Any amount deducted and withheld under clause (iii) shall for all purposes be treated as if it were paid te the individual as unemployment compensation and paid by such individual to the State or local child support enforcement agency in satisfaction of his child support obligations.

[See main edition for text of (B) and (C), (3) and (4)]

(f) Income and eligibility verification system

The State agency charged with the administration of the State law shall provide that information shall be requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b-7 of this title.

(g) Recovery of unemployment benefit payments

(1) A State may deduct from unemployment benefits otherwise payable to an individual an amount equal to any overpayment made to such individual under an unemployment benefit program of the United States or of any other State, and not previously recovered. The amount so deducted shall be paid to the jurisdiction under whose program such overpayment was made. Any such deduction shall be made only in accordance with the same procedures relating to notice and opportunity for a

hearing as apply to the recovery of overpayments of regular unemployment compensation paid by such State.

(2) Any State may enter into an agreement with the Secretary of Labor under which—

(A) the State agrees to recover from unemployment benefits otherwise payable to an individual by such State any overpayments made under an unemployment benefit program of the United States to such individual and not previously recovered, in accordance with paragraph (1), and to pay such amounts recovered to the United States for credit to the appropriate account, and

(B) the United States agrees to allow the State to recover from unemployment benefits otherwise payable to an individual under an unemployment benefit program of the United States any overpayments made by such State to such individual under a State unemployment benefit program and not previously recovered, in accordance with the same procedures as apply under paragraph (1).

(3) For purposes of this subsection, "unemployment benefits" means unemployment compensation, trade adjustment allowances, and other unemployment assistance.

(As amended Apr. 20, 1983, Pub. L. 98-21, title V, §§ 515(a), 523(b), 97 Stat. 147, 148; July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2651(d), 2663(b)(2)-(5), 98 Stat. 1149, 1165; Dec. 23, 1985, Pub. L. 99-198, title XV, § 1535(b)(3), 99 Stat. 1584; Apr. 7, 1986, Pub. L. 99-272, title XII, § 12401(a), 100 Stat. 297.)

REFERENCES IN TEXT

The Federal Unemployment Tax Act, referred to in subsec. (a), is act Aug. 16, 1954, ch. 736, §§ 3301-3311, 68A Stat. 439, as amended, which is classified generally to chapter 23 (§ 3301 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see section 3311 of Title 26 and Tables.

AMENDMENTS

1986—Subsec. (a)(5). Pub. L. 99-272, § 12401(a)(1), inserted provision at end that amounts may be deducted from unemployment benefits and used to repay overpayments as provided in subsection (g) of this section.

Subsec. (g). Pub. L. 99-272, § 12461(a)(2), added subsec. (g).

1985—Subsec. (d)(2) to (4). Pub. L. 99-198 added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

1984—Subsec. (a)(4). Pub. L. 98-369, § 2663(b)(2), substituted "section 3305(b)" for "section 1606(b)".

Subsec. (a)(5). Pub. L. 98-389, § 2663(b)(3), substituted "section 3305(b)" for "section 1606(b)" and before last proviso substituted a colon for erroneous punctuation.

Subsec. (c)(1), (2). Pub. L. 98-369, § 2663(b)(4), substituted "that" for "That".

Subsec. (e)(2)(A)(i). Pub. L. 98-369, § 2663(b)(5), substituted "child support obligations" for "child support obligatons".

Subsec. (f). Pub. L. 98-369, § 2651(d), added subsec. (f).

1983—Subsec. (a)(5). Pub. L. 98-21, § 523(b), inserted provision that nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor.

Subsec. (c)(3). Pub. L. 98-21, § 515(a), added par. (3).

EFFECTIVE DATE OF 1986 AMENDMENT

Section 12401(c) of Pub. L. 99-272 provided that: "The amendments made by this section [amending this section and sections 3304 and 3306 of Title 26, Internal Revenue Code] shall apply to recoveries made on or after the date of the enactment of this Act [Apr. 7, 1986] and shall apply with respect to overpayments made before, on, or after such date."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2651(d) of Pub. L. 98-369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(*l*)(2) of Pub. L. 98-369, set out as an Effective Date note under section 1320b-7 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 523(b) of Pub. L. 98-21 effective Apr. 20, 1983, see section 523(c) of Pub. L. 98-21 set out as a note under section 3304 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 504, 1103, 4728 of this title; title 5 section 8506; title 7 section 2020; title 26 section 3308; title 29 section 49d; title 45 section 363.

§ 504. Judicial review

[*See main edition for text of* (a) *to* (d)]

(c) Repealed. Pub. L. 98-620, title IV, § 402(39), Nov. 8, 1984, 98 Stat. 3360

(As amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 402(39), 98 Stat. 3360.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-620 struck out subsec. (e) which provided that any judicial proceedings under this section were entitled to, and upon request of the Secretary or the State would receive, a preference and be heard and determined as expeditiously as possible.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

SUBCHAPTER IV—GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 632a, 1301, 1306a, 1320b-2, 1320b-6, 1396b, 3020d, 6862, 9432, 9433, 9452 of this title; title 7 sections 2014, 2015, 2017, 2025, 2029; title 20 sections 2711, 2712; title 29 section 1532.

PART A—AID TO FAMILIES WITH DEPENDENT CHILDREN

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 405, 428, 603a, 622, 632a, 644, 645, 651, 652, 653, 654, 657, 658, 666, 670, 671, 672, 673, 678, 1306, 1309, 1311, 1315, 1316, 1318, 1319, 1320b-3, 1320b-6, 1320b-7, 1395v, 1396a, 1396b,

1396d, 1758, 8624, 9835 of this title; title 7 sections 2014, 2015, 2017, 2020, 2026; title 8 sections 1160, 1255a, 1522; title 20 sections 1070a-6, 1087vv; title 26 sections 51, 3304, 6103; title 29 sections 49b, 1603; title 40 App. section 202.

§ 602. State plans for aid and services to needy families with children; contents; approval by Secretary; records and reports; treatment of earned income advances

(a) Contents

A State plan for aid and services to needy families with children must—

(1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State;

(3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;

(4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to families with dependent children is denied or is not acted upon with reasonable promptness;

(5) provide such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan;

(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) except as may be otherwise provided in paragraph (8) or (31) and section 615 of this title, provide that the State agency—

(A) shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid;

(B) shall determine ineligible for aid any family the combined value of whose resources (reduced by any obligations or debts with respect to such resources) exceeds $1,000 or such lower amount as the State may determine, but not including as a resource for purposes of this subparagraph (i) a home owned and occupied by such child, relative, or other individual and so much of the family member's ownership interest in one automobile as does not exceed such amount as the Secretary may prescribe, (ii) under regulations prescribed by the Secretary, burial plots (one for each such child, relative, and other individual), and funeral agreements or (iii) for such period or periods of time as the Secretary may prescribe, real property which the family is making a good-faith effort to dispose of, but any aid payable to the family for any such period shall be conditioned upon such disposal, and any payments of such aid for that period shall (at the time of the disposal) be considered overpayments to the extent that they would not have been made had the disposal occurred at the beginning of the period for which the payments of such aid were made; and

(C) may, in the case of a family claiming or receiving aid under this part for any month, take into consideration as income (to the extent the State determines appropriate, as specified in such plan, and notwithstanding any other provision of law)—

(i) an amount not to exceed the value of the family's monthly allotment of food stamp coupons, to the extent such value duplicates the amount for food included in the maximum amount that would be payable under the State plan to a family of the same composition with no other income; and

(ii) an amount not to exceed the value of any rent or honsing subsidy provided to such family, to the extent such value duplicates the amount for housing included in the maximum amount that would be payable under the State plan to a family of the same composition with no other income;

(8)(A) provide that, with respect to any month, in making the determination under paragraph (7), the State agency—

(i) shall disregard all of the earned income of each dependent child receiving aid to families with dependent children who is (as determined by the State in accordance with standards prescribed by the Secretary) a full-time student or a part-time student who is not a full-time employee attending a school, college, or university, or a course of vocational or technical training designed to fit him for gainful employment;

(ii) shall disregard from the earned income of any child or relative applying for or receiving aid to families with dependent children, or of any other individual (living in the same home as such relative and child) whose needs are taken into account in making such determination, the first $75 of the total of such earned income for such month;

(iii) shall disregard from the earned income of any child, relative, or other individual specified in clause (ii), an amount equal to expenditures for care in such month for a dependent child, or an incapacitated individual living in the same home as the dependent child, receiving aid to families with dependent children and requiring such care for such month, to the extent that such amount (for each such de-

pendent child or incapacitated individual) does not exceed $160 (or such lesser amount as the Secretary may prescribe in the case of an individual not engaged in full-time employment or not employed throughout the month);

(iv) shall disregard from the earned income of any child or relative receiving aid to families with dependent children, or of any other individual (living in the same home as such relative and child) whose needs are taken into account in making such determination, an amount equal to (I) the first $30 of the total of such earned income not disregarded under any other clause of this subparagraph plus (II) one-third of the remainder thereof (but excluding, for purposes of this subparagraph, earned income derived from participation on a project maintained under the programs established by section 632(b)(2) and (3) of this title);

(v) may disregard the income of any dependent child applying for or receiving aid to families with dependent children which is derived from a program carried out under the Job Training Partnership Act (as originally enacted) [29 U.S.C. 1501 et seq.], but only in such amounts, and for such period of time (not to exceed six months with respect to earned income) as the Secretary may provide in regulations;

(vi) shall disregard the first $50 of any child support payments received in such month with respect to the dependent child or children in any family applying for or receiving aid to families with dependent children (including support payments collected and paid to the family under section 657(b) of this title); and

(vii) may disregard all or any part of the earned income of a dependent child who is a full-time student and who is applying for aid to families with dependent children, but only if the earned income of such child is excluded for such month in determining the family's total income under paragraph (18);

(B) provide that (with respect to any month) the State agency—

(i) shall not disregard, under clause (ii), (iii), or (iv) of subparagraph (A), any earned income of any one of the persons specified in subparagraph (A)(ii) if such person—

(I) terminated his employment or reduced his earned income without good cause within such period (of not less than thirty days) preceding such month as may be prescribed by the Secretary;

(II) refused without good cause, within such period preceding such month as may be prescribed by the Secretary, to accept employment in which he is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined by the State or local agency administering the State plan, after notification by the employer, to be a bona fide offer of employment; or

(III) failed without good cause to make a timely report (as prescribed by the State plan pursuant to paragraph (14)) to the State agency of earned income received in such month; and

(ii)(I) shall not disregard—

(a) under subclause (II) of subparagraph (A)(iv), in a case where such subclause has already been applied to the income of the persons involved for four consecutive months while they were receiving aid under the plan, or

(b) under subclause (I) of subparagraph (A)(iv), in a case where such subclause has already been applied to the income of the persons involved for twelve consecutive months while they were receiving aid under the plan,

any earned income of any of the persons specified in subparagraph (A)(ii), if, with respect to such month, the income of the persons so specified was in excess of their need, as determined by the State agency pursuant to paragraph (7) (without regard to subparagraph (A)(iv) of this paragraph), unless the persons received aid under the plan in one or more of the four months preceding such month; and

(II) in the case of the earned income of a person with respect to whom subparagraph (A)(iv) has been applied for four consecutive months, shall not apply the provisions of subclause (II) of such subparagraph to any month after such month, or apply the provisions of subclause (I) of such subparagraph to any month after the eighth month following such month, for so long as he continues to receive aid under the plan, and shall not apply the provisions of either such subclause to any month thereafter until the expiration of an additional period of twelve consecutive months during which he is not a recipient of such aid; and

(C) provide that in implementing this paragraph the term "earned income" shall mean gross earned income, prior to any deductions for taxes or for any other purposes;

(9) provide safeguards which restrict the use or disclosure of information concerning applicants or recipients to purposes directly connected with (A) the administration of the plan of the State approved under this part, the plan or program of the State under part B, C, or D of this subchapter or under subchapter I, X, XIV, XVI, XIX, or XX of this chapter, or the supplemental security income program established by subchapter XVI of this chapter, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, (C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, and (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental entity which is authorized by law to conduct such audit or activity; and

the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an entity referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient; but such safeguards shall not prevent the State agency or the local agency responsible for the administration of the State plan in the locality (whether or not the State has enacted legislation allowing public access to Federal welfare records) from furnishing a State or local law enforcement officer, upon his request, with the current address of any recipient if the officer furnishes the agency with such recipient's name and social security account number and satisfactorily demonstrates that such recipient is a fugitive felon, that the location or apprehension of such felon is within the officer's official duties, and that the request is made in the proper exercise of those duties;

(10)(A) provide that all individuals wishing to make application for aid to families with dependent children shall have opportunity to do so, and that aid to families with dependent children shall, subject to paragraphs (25) and (26), be furnished with reasonable promptness to all eligible individuals; and

(B) provide that an application for aid under the plan will be effective no earlier than the date such application is filed with the State agency or local agency responsible for the administration of the State plan, and the amount payable for the month in which the application becomes effective, if such application becomes effective after the first day of such month, shall bear the same ratio to the amount which would be payable if the application had been effective on the first day of such month as the number of days in the month including and following the effective date of the application bears to the total number of days in such month;

(11) provide for prompt notice (including the transmittal of all relevant information) to the State child support collection agency (established pursuant to part D of this subchapter) of the furnishing of aid to families with dependent children with respect to a child who has been deserted or abandoned by a parent (including a child born out of wedlock without regard to whether the paternity of such child has been established);

(12) provide, effective October 1, 1950, that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 302 of this title;

(13) with respect to families who are required to report monthly to the State agency pursuant to paragraph (14) (and at the option of the State with respect to other families), provide that—

(A) except as provided in subparagraph (B), the State agency (i) will determine a family's eligibility for aid for a month on the basis of the family's income, composition, resources, and other similar relevant circumstances during such month, and (ii) will determine the amount of such aid on the basis of the income and other relevant circumstances in the first or, at the option of the State (but only where the Secretary determines it to be appropriate, in the case of families who are required to report monthly to the State agency pursuant to paragraph (14)), second month preceding such month; and

(B) in the case of the first month, or at the option of the State (but only where the Secretary determines it to be appropriate, in the case of families who are required to report monthly to the State agency pursuant to paragraph (14)), the first and second months, in a period of consecutive months for which aid is payable, the State agency will determine the amount of aid on the basis of the family's income and other relevant circumstances in such first or second month;

(14) with respect to families in the category of recent work history or earned income cases (and at the option of the State with respect to families in other categories), provide (A) that the State agency will require each family to which it furnishes aid to families with dependent children (or to which it would provide such aid but for paragraph (22) or (32)) to report, as a condition to the continued receipt of such aid (or to continuing to be deemed to be a recipient of such aid), each month to the State agency on—

(i) the income received, family composition, and other relevant circumstances during the prior month; and

(ii) the income and resources it expects to receive, or any changes in circumstances affecting continued eligibility or benefit amount, that it expects to occur, in that month (or in future months);

except that (with the prior approval of the Secretary in recent work history and earned income cases) the State may select categories of recipients who may report at specified less frequent intervals upon a determination that to require individuals in such categories to report monthly would result in unwarranted expenditures for administration of this paragraph; and

(B) that, in addition to whatever action may be appropriate based on other reports or information received by the State agency, the State agency will take prompt action to adjust the amount of assistance payable, as may be appropriate, on the basis of the information contained in the report (or upon the failure of the family to furnish a timely report), and will give an appropriate explanatory notice, concurrent with its action, to the family;

(15) provide (A) for the development of a program, for each appropriate relative and dependent child receiving aid under the plan and for each appropriate individual (living in the same home as a relative and child receiving such aid) whose needs are taken into account in making the determination under paragraph (7), for preventing or reducing the

incidence of births out of wedlock and otherwise strengthening family life, and for implementing such program by assuring that in all appropriate cases (including minors who can be considered to be sexually active) family planning services are offered to them and are provided promptly (directly or under arrangements with others) to all individuals voluntarily requesting such services, but acceptance of family planning services provided under the plan shall be voluntary on the part of such members and individuals and shall not be a prerequisite to eligibility for or the receipt of any other service under the plan; and (B) to the extent that services provided under this paragraph are furnished by the staff of the State agency or the local agency administering the State plan in each of the political subdivisions of the State, for the establishment of a single organizational unit in such State or local agency, as the case may be, responsible for the furnishing of such services;

(16) provide that where the State agency has reason to believe that the home in which a relative and child receiving aid reside is unsuitable for the child because of the neglect, abuse, or exploitation of such child it shall bring such condition to the attention of the appropriate court or law enforcement agencies in the State, providing such data with respect to the situation it may have;

(17) provide that if a child or relative applying for or receiving aid to families with dependent children, or any other person whose need the State considers when determining the income of a family, receives in any month an amount of earned or unearned income which, together with all other income for that month not excluded under paragraph (8), exceeds the State's standard of need applicable to the family of which he is a member—

(A) such amount of income shall be considered income to such individual in the month received, and the family of which such person is a member shall be ineligible for aid under the plan for the whole number of months that equals (i) the sum of such amount and all other income received in such month, not excluded under paragraph (8), divided by (ii) the standard of need applicable to such family, and

(B) any income remaining (which amount is less than the applicable monthly standard) shall be treated as income received in the first month following the period of ineligibility specified in subparagraph (A);

except that the State may at its option recalculate the period of ineligibility otherwise determined under subparagraph (A) (but only with respect to the remaining months in such period) in any one or more of the following cases: (i) an event occurs which, had the family been receiving aid under the State plan for the month of the occurrence, would result in a change in the amount of aid payable for such month under the plan, or (ii) the income received has become unavailable to the members of the family for reasons that were beyond the control of such members, or (iii) the family incurs, becomes responsible for, and pays medical expenses (as allowed by the State) in a month of ineligibility determined under subparagraph (A) (which expenses may be considered as an offset against the amount of income received in the first month of such ineligibility);

(18) provide that no family shall be eligible for aid under the plan for any month if, for that month, the total income of the family (other than payments under the plan), without application of paragraph (8), other than paragraph (8)(A)(v), exceeds 185 percent of the State's standard of need for a family of the same composition, except that in determining the total income of the family the State may exclude any earned income of a dependent child who is a full-time student, in such amounts and for such period of time (not to exceed 6 months) as the State may determine;

(19) provide—

(A) that every individual, as a condition of eligibility for aid under this part, shall register for manpower services, training, employment, and other employment-related activities (including employment search, not to exceed eight weeks in total in each year) with the Secretary of Labor as provided by regulations issued by him, unless such individual is—

(i) a child who is under age 16 or attending, full-time, an elementary, secondary, or vocational (or technical) school;

(ii) a person who is ill, incapacitated, or of advanced age;

(iii) a person so remote from a work incentive project that his effective participation is precluded;

(iv) a person whose presence in the home is required because of illness or incapacity of another member of the household;

(v) the parent or other relative of a child under the age of six who is personally providing care for the child with only very brief and infrequent absences from the child;

(vi) the parent or other caretaker of a child who is deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, if another adult relative is in the home and not excluded by clause (i), (ii), (iii), or (iv) of this subparagraph (unless he has failed to register as required by this subparagraph, or has been found by the Secretary of Labor to have refused without good cause to participate under a work incentive program or accept employment as described in subparagraph (F) of this paragraph);

(vii) a person who is working not less than 30 hours per week;

(viii) the parent of a child who is deprived of parental support or care by reason of the unemployment of a parent, if the other parent (who is the principal earner, as defined in section 607(d) of this title) is not excluded by the preceding clauses of this subparagraph; or

(ix) a woman who is pregnant if it has been medically verified that the child is expected to be born in the month in which such registration would otherwise be required or within the 3-month period immediately following such month;

and that any individual referred to in clause (v) shall be advised of his or her option to register, if he or she so desires, pursuant to this paragraph, and shall be informed of the child care services (if any) which will be available to him or her in the event he or she should decide so to register;

(B) that aid to families with dependent children under the plan will not be denied by reason of such registration or the individual's certification to the Secretary of Labor under subparagraph (G) of this paragraph, or by reason of an individual's participation on a project under the program established by section 632(b)(2) or (3) of this title;

(C) for arrangements to assure that there will be made a non-Federal contribution to the work incentive programs established by part C of this subchapter by appropriate agencies of the State or private organizations of 10 per centum of the cost of such programs, as specified in section 635(b) of this title;

(D) that (i) training incentives authorized under section 634 of this title shall be disregarded in determining the needs of an individual under paragraph (7), and (ii) in determining such individual's needs the additional expenses attributable to his participation in a program established by section 632(b)(2) or (3) of this title shall be taken into account;

(E) Repealed. Pub. L. 92-223, § 3(a)(5), Dec. 28, 1971, 85 Stat. 804

(F) that if (and for such period as is prescribed under joint regulations of the Secretary and the Secretary of Labor) any child, relative or individual has been found by the Secretary of Labor under section 633(g) of this title to have refused without good cause to participate under a work incentive program established by part C of this subchapter with respect to which the Secretary of Labor has determined his participation is consistent with the purposes of such part C, or to have refused without good cause to accept employment in which he is able to engage which is offered through the public employment offices of the Stato, or is otherwise offered by an employer if the offer of such employer is determined, after notification by him, to be a bona fide offer of employment—

(i) if the relative makes such refusal, such relative's needs shall not be taken into account in making the determination under paragraph (7), and aid for any dependent child in the family in the form of payments of the type described in section 606(b)(2) of this title (which in such a case shall be without regard to clauses (A) through (D) thereof) or section 672 of this title will be made unless the State agency, after making reasonable efforts, is unable to locate an appropriate individual to whom such payments can be made;

(ii) if the parent who has been designated as the principal earner, for purposes of section 607 of this title, makes such refusal, aid will be denied to all members of the family;

(iii) aid with respect to a dependent child will be denied if a child who is the only child receiving aid in the family makes such refusal;

(iv) if there is more than one child receiving aid in the family, aid for any such child will be denied (and his needs will not be taken into account in making the determination under paragraph (7)) if that child makes such refusal; and

(v) if such individual makes such refusal, such individual's needs shall not be taken into account in making the determination under paragraph (7);

(G) that the State agency will have in effect a special program which (i) will be administered by a separate administrative unit (which will, to the maximum extent feasible, be located in the same facility as that utilized for the administration of programs established pursuant to section 632(b)(1), (2), or (3) of this title) and the employees of which will, to the maximum extent feasible, perform services only in connection with the administration of such program, (ii) will provide (through arrangements with others or otherwise) for individuals who have been registered pursuant to subparagraph (A) of this paragraph (I) in accordance with the order of priority listed in section 633(a) of this title, such health, vocational rehabilitation, counseling, child care, and other social and supportive services as are necessary to enable such individuals to accept employment or receive manpower training provided under section 632(b)(1), (2), or (3) of this title, and will, when arrangements have been made to provide necessary supportive services, including child care, certify to the Secretary of Labor those individuals who are ready for employment or training under section 632(b)(1), (2), or (3) of this title, (II) such social and supportive services as are necessary to enable such individuals as determined appropriate by the Secretary of Labor actively to engage in other employment-related (including but not limited to employment search) activities, as well as timely payment for necessary employment search expenses, and (III) for a period deemed appropriate by the Secretary of Labor after such an individual accepts employment, such social and supportive services as are reasonable and necessary to enable him to retain such employment, (iii) will participate in the development of operational and employability plans under section 633(b) of this title; and (iv) provides for purposes of clause (ii) that, when more than one kind of child care is available, the mother may choose the type, but she may not refuse to accept child care services if they are available; and

(H) that an individual participating in employment search activities shall not be referred to employment opportunities which do not meet the criteria for appropriate work and training to which an individual may otherwise be assigned under section 632(b)(I), (2), or (3) of this title;

(20) provide that the State has in effect a State plan for foster care and adoption assistance approved under part E of this subchapter;

(21) provide—

(A) that, for purposes of this part, participation in a strike shall not constitute good cause to leave, or to refuse to seek or accept employment; and

(B)(i) that aid to families with dependent children is not payable to a family for any month in which any caretaker relative with whom the child is living is, on the last day of such month, participating in a strike, and (ii) that no individual's needs shall be included in determining the amount of aid payable for any month to a family under the plan if, on the last day of such month, such individual is participating in a strike;

(22) provide that the State agency will promptly take all necessary steps to correct any overpayment or underpayment of aid under the State plan, and, in the case of—

(A) an overpayment to an individual who is a current recipient of such aid (including a current recipient whose overpayment occurred during a prior period of eligibility), recovery will be made by repayment by the individual or by reducing the amount of any future aid payable to the family of which he is a member, except that such recovery shall not result in the reduction of aid payable for any month, such that the aid, when added to such family's liquid resources and to its income (without application of paragraph (8)), is less than 90 percent of the amount payable under the State plan to a family of the same composition with no other income (and, in the case of an individual to whom no payment is made for a month solely by reason of recovery of an overpayment, such individual shall be deemed to be a recipient of aid for such month);

(B) an overpayment to any individual who is no longer receiving aid under the plan, recovery shall be made by appropriate action under State law against the income or resources of the individual or the family; and

(C) an underpayment, the corrective payment shall be disregarded in determining the income of the family, and shall be disregarded in determining its resources in the month the corrective payment is made and in the following month;

except that no recovery need be attempted or carried out under subparagraph (B) in any case, other than a case involving fraud on the part of the recipient, where (as determined by the State agency in accordance with criteria for determining cost-effectiveness, and with dollar limitations, which shall be prescribed by the Secretary in regulations) the cost of recovery would equal or exceed the amount of the overpayment involved;

(23) provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted;

(24) provide that if an individual is receiving benefits under subchapter XVI of this chapter, then, for the period for which such benefits are received, such individual shall not be regarded as a member of a family for purposes of determining the amount of the benefits of the family under this subchapter and his income and resources shall not be counted as income and resources of a family under this subchapter;

(25) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b-7 of this title;

(26) provide that, as a condition of eligibility for aid, each applicant or recipient will be required—

(A) to assign the State any rights to support from any other person such applicant may have (i) in his own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid, and (ii) which have accrued at the time such assignment is executed;

(B) to cooperate with the State (i) in establishing the paternity of a child born out of wedlock with respect to whom aid is claimed, and (ii) in obtaining support payments for such applicant and for a child with respect to whom such aid is claimed, or in obtaining any other payments or property due such applicant or such child, unless (in either case) such applicant or recipient 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 child on whose behalf aid is claimed; and that, if the relative with whom a child is living is found to be ineligible because of failure to comply with the requirements of subparagraphs (A) and (B) of this paragraph, any aid for which such child is eligible will be provided in the form of protective payments as described in section 606(b)(2) of this title (without regard to clauses (A) through (D) of such section) unless the State agency, after making reasonable efforts, is unable to locate an appropriate individual to whom such payments can be made; 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 State's plan for medical assistance under subchapter XIX of this chapter, 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; but the State shall not be subject to any financial penalty in the administration or enforcement of this subparagraph as a result of any monitoring, quality control, or auditing requirements;

(27) provide that the State has in effect a plan approved under part D of this subchapter and operates a child support program in substantial compliance with such plan;

(28) provide that, in determining the amount of aid to which an eligible family is entitled, any portion of the amounts collected in any particular month as child support pursuant to a plan approved under part D of this subchapter, and retained by the State under section 657 of this title, which (under the State plan approved under this part as in effect both during July 1975 and during that particular month) would not have caused a reduction in the amount of aid paid to the family if such amounts had been paid directly to the family, shall be added to the amount of aid otherwise payable to such family under the State plan approved under this part;

(29) Repealed. Pub. L. 98-369, div. B, title VI, § 2651(b)(2), July 18, 1984, 98 Stat. 1149

(30) at the option of the State, provide for the establishment and operation, in accordance with an (initial and annually updated) advance automatic data processing planning document approved under subsection (d) of this section, of an automated statewide management information system designed effectively and efficiently, to assist management in the administration of the State plan for aid to families with dependent children approved under this part, so as (A) to control and account for (i) all the factors in the total eligibility determination process under such plan for aid (including but not limited to (I) identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses, and mailing addresses (including postal ZIP codes), of all applicants and recipients of such aid and the relative with whom any child who is such an applicant or recipient is living) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether an individual is or has been receiving benefits from more than one jurisdiction, (II) checking records of applicants and recipients of such aid on a periodic basis with other agencies, both intra- and inter-State, for determination and verification of eligibility and payment pursuant to requirements imposed by other provisions of this chapter), (ii) the costs, quality, and delivery of funds and services furnished to applicants for and recipients of such aid, (B) to notify the appropriate officials of child support, food stamp, social service, and medical assistance programs approved under subchapter XIX of this chapter whenever the case becomes ineligible or the amount of aid or services is changed, and (C) to provide for security against unauthorized access to, or use of, the data in such system;

(31) provide that, in making the determination for any month under paragraph (7), the State agency shall take into consideration so much of the income of the dependent child's stepparent living in the same home as such child as exceeds the sum of (A) the first $75 of the total of such stepparent's earned income for such month, (B) the State's standard of need under such plan for a family of the same composition as the stepparent and those other individuals living in the same household as the dependent child and claimed by such stepparent as dependents for purposes of determining his Federal personal income tax liability but whose needs are not taken into account in making the determination under paragraph (7), (C) amounts paid by the stepparent to individuals not living in such household and claimed by him as dependents for purposes of determining his Federal personal income tax liability, and (D) payments by such stepparent of alimony or child support with respect to individuals not living in such household;

(32) provide that no payment of aid shall be made under the plan for any month if the amount of such payment, as determined in accordance with the applicable provisions of the plan and of this part, would be less than $10, but an individual with respect to whom a payment of aid under the plan is denied solely by reason of this paragraph is deemed to be a recipient of aid but shall not be eligible to participate in a community work experience program;

(33) provide that in order for any individual to be considered a dependent child, a caretaker relative whose needs are to be taken into account in making the determination under paragraph (7), or any other person whose needs should be taken into account in making such a determination with respect to the child or relative, such individual must be either (A) a citizen, or (B) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 1157(c) of title 8 (or of section 1153(a)(7) of title 8 prior to April 1, 1980), or as a result of the application of the provisions of section 1158 or 1182(d)(5) of title 8);

(34) provide that both the standard of need applied to a family and the amount of aid determined to be payable, when not a whole dollar amount, shall be rounded to the next lower whole dollar amount;

(35) at the option of the State, provide—

(A) that as a condition of eligibility for aid under the State plan of any individual claiming such aid who is required to register pursuant to paragraph (19)(A) (or who would be required to register under paragraph (19)(A) but for clause (iii) thereof), including all such individuals or only such groups, types, or classes thereof as the State agency may designate for purposes of

this paragraph, such individual will be required to participate in a program of employment search—

(i) beginning at the time he applies for such aid (or an application including his need is filed) and continuing for a period (prescribed by the State) of not more than eight weeks (but this requirement may not be used as a reason for any delay in making a determination of an individual's eligibility for aid or in issuing a payment to or in behalf of any individual who is otherwise eligible for such aid); and

(ii) at such time or times after the close of the period prescribed under clause (i) as the State agency may determine but not to exceed a total of 8 weeks in any 12 consecutive months;

(B) that any individual participating in a program of employment search under this paragraph will be furnished such transportation and other services, or paid (in advance or by way of reimbursement) such amounts to cover transportation costs and other expenses reasonably incurred in meeting requirements imposed on him under this paragraph, as may be necessary to enable such individual to participate in such program; and

(C) that, in the case of an individual who fails without good cause to comply with requirements imposed upon him under this paragraph, the sanctions imposed by paragraph (19)(F) shall be applied in the same manner as if the individual had made a refusal of the type which would cause the provisions of such paragraph (19)(F) to be applied (except that the State may at its option, for purposes of this paragraph, reduce the period for which such sanctions would otherwise be in effect);

(36) provide, at the option of the State, that in making the determination for any month under paragraph (7), the State agency shall not include as income any support or maintenance assistance furnished to or on behalf of the family which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) is based on need for such support and maintenance, including assistance received to assist in meeting the costs of home energy (including both heating and cooling), and which is (A) assistance furnished in kind by a private nonprofit agency, or (B) assistance furnished by a supplier of home heating oil or gas, by an entity whose revenues are primarily derived on a rate-of-return basis regulated by a State or Federal governmental entity, or by a municipal utility providing home energy;

(37) provide that, in any case where a family has ceased to receive aid under the plan because (by reason of paragraph (8)(B)(ii)(II)) the provisions of paragraph (8)(A)(iv) no longer apply, such family shall be considered for purposes of subchapter XIX of this chapter to be receiving aid to families with dependent children under such plan for a period of 9 months after the last month for which the family actually received such aid; and the State may at its option extend such period by an additional period of up to 6 months in the case of a family that would be eligible during such additional period to receive aid under the plan (without regard to this paragraph) if such paragraph (8)(A)(iv) applied;

(38) provide that in making the determination under paragraph (7) with respect to a dependent child and applying paragraph (8), the State agency shall (except as otherwise provided in this part) include—

(A) any parent of such child, and

(B) any brother or sister of such child, if such brother or sister meets the conditions described in clauses (1) and (2) of section 606(a) of this title or in section 607(a) of this title (if such section is applicable to the State),

if such parent, brother, or sister is living in the same home as the dependent child, and any income of or available for such parent, brother, or sister shall be included in making such determination and applying such paragraph with respect to the family (notwithstanding section 405(j) of this title, in the case of benefits provided under subchapter II of this chapter); and

(39) provide that in making the determination under paragraph (7) with respect to a dependent child whose parent or legal guardian is under the age of 18, the State agency shall (except as otherwise provided in this part) include any income of such minor's own parents or legal guardians who are living in the same home as such minor and dependent child, to the same extent that income of a stepparent is included under paragraph (31).

The Secretary may waive any of the requirements imposed under or in connection with paragraphs (13) and (14) of this subsection to the extent necessary to make such requirements compatible with the corresponding reporting and budgeting requirements by the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.].

[*See main edition for text of* (b)]

(c) Compilation of data; publishing of findings; reports to Congress

The Secretary shall, on the basis of his review of the reports received from the States under paragraph (15) of subsection (a) of this section, compile such data as he believes necessary and from time to time publish his findings as to the effectiveness of the programs developed and administered by the States under such paragraph. The Secretary shall annually report to the Congress (with the first such report being made on or before July 1, 1970) on the programs developed and administered by each State under such paragraph (15).

(d) Payments treated as earned income

(1) For purposes of paragraphs (7) and (8) of subsection (a) of this section, any refund of Federal income taxes made by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income credit) and any payment

made by an employer under section 3507 of such Code (relating to advance payment of earned income credit) shall be considered earned income.

(2) In any case in which such advance payments for a taxable year made by all employers to an individual under section 3507 of such Code exceed the amount of such individual's earned income credit allowable under section 32 of such Code for such year, so that such individual is liable under section 32(g) of such Code for a tax equal to such excess, such individual's benefit amount must be appropriately adjusted so as to provide payment to such individual of an amount equal to the amount of the benefits lost by such individual on account of such excess advance payments.

(e) Approval of automatic data processing planning document; review of management information systems; failure to comply; reduction of payments

[*See main edition for text of (1)*]

(2) [*See main edition for text of (A) and (B)*]

(C) If the Secretary determines that such a system has not been implemented by the State by the date specified for implementation in the State's advance automatic data processing planning document, then the Secretary shall reduce payments to such State, in accordance with section 603(b) of this title, in an amount equal to 40 percent of the expenditures referred to in section 603(a)(3)(B) of this title with respect to which payments were made to the State under section 603(a)(3)(B) of this title. The Secretary may extend the deadline for implementation if the State demonstrates to the satisfaction of the Secretary that the State cannot implement such system by the date specified in such planning document due to circumstances beyond the State's control.

(f) Temporary disqualification of certain newly legalized aliens; exception for certain dependent children

(1) For temporary disqualification of certain newly legalized aliens from receiving aid to families with dependent children, see subsection (h) of section 1255a of title 8, subsection (f) of section 1160 of title 8, and subsection (d)(7) [1] of section 1161 of title 8.

(2) In any case where an alien disqualified from receiving aid under such subsection (h), (f), or (d)(7) [1] is the parent of a child who is not so disqualified and who (without any adjustment of status under such section 1255a, 1160, or 1161) is considered a dependent child under subsection (a)(33) of this section, or is the brother or sister of such a child, subsection (a)(38) of this section shall not apply, and the needs of such alien shall not be taken into account in making the determination under subsection (a)(7) of this section with respect to such child, but the income of such alien (if he or she is the parent of such child) shall be included in making such determination to the same extent that income of a stepparent is included under subsection (a)(31) of this section.

(Aug. 14, 1935, ch. 531, title IV, § 402, 49 Stat. 627; Aug. 10, 1939, ch. 666, title IV, § 401, 53 Stat. 1379; Aug. 28, 1950, ch. 809, title III, pt. 2, § 321, pt. 6, § 361(c), (d), 64 Stat. 549, 558; Aug. 1, 1956, ch. 836, title III, § 312(b), 70 Stat. 849; July 25, 1962, Pub. L. 87-543, title I, §§ 103, 104(a)(2), (3)(A), (B), (5)(A), 106(b), 76 Stat. 185, 188; July 30, 1965, Pub. L. 89-97, title IV, §§ 403(b), 410, 79 Stat. 418, 423; Jan. 2, 1968, Pub. L. 90-248, title II, §§ 201(a), (b), 202(a), (b), 204(b), (e), 205(a), 210(a)(2), 211(a), 213(b), 81 Stat. 877, 879, 881, 890, 892, 895, 896, 898; Dec. 28, 1971, Pub. L. 92-223, § 3(a)(1)-(7), 85 Stat. 803, 804; Oct. 30, 1972, Pub. L. 92-603, title II, § 299E(c), title IV, § 414(a), 86 Stat. 1462, 1492; Jan. 4, 1975, Pub. L. 93-647, §§ 3(a)(1), (2), (8), 101(c)(2)-(5), (8), 88 Stat. 2348, 2349, 2359, 2360; Aug. 9, 1975, Pub. L. 94-88, title II, §§ 202, 207, 208(a), 209, 89 Stat. 434, 436, 437; Dec. 20, 1977, Pub. L. 95-216, title IV, § 403(c), 91 Stat. 1561; Apr. 1, 1980, Pub. L. 96-222, title I, § 101(a)(2)(A), 94 Stat. 195; June 9, 1980, Pub. L. 96-265, title IV, §§ 401(a)-(f), 403(a), 406(b), 94 Stat. 460-462, 465, 466; June 17, 1980, Pub. L. 96-272, title I, § 101(a)(3)(A), title III, § 302(a), 94 Stat. 512, 528; Oct. 19, 1980, Pub. L. 96-473, § 6(f), 94 Stat. 2266; Aug. 13, 1981, Pub. L. 97-35, title XXIII, §§ 2301-2306(a), 2310, 2313(b), (c)(1), 2314, 2315(a), 2316, 2318, 2320(a), (b)(1), 2353(b)(1), (c), 95 Stat. 843-846, 852, 854-857, 872; Sept. 3, 1982, Pub. L. 97-248, title I, §§ 151(a), 152(a), 154(a), 96 Stat. 395, 396; Oct. 13, 1982, Pub. L. 97-300, title V, § 503, 96 Stat. 1398; Jan. 6, 1983, Pub. L. 97-424, title V, § 545(b), 96 Stat. 2198; Apr. 20, 1983, Pub. L. 98-21, title IV, § 404(b), 97 Stat. 140; July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2621-2624(a), 2625(a), 2626, 2628, 2629, 2631-2634, 2636, 2639(a), (c), 2640(a), (c), 2642(a), (b), 2651(b)(1), (2), 2663(c)(1), (3)(B), (*l*)(1), 98 Stat. 1134-1137, 1141, 1142, 1144-1146, 1149, 1165, 1166, 1171; Aug. 16, 1984, Pub. L. 98-378, § 9(a)(2), 98 Stat. 1316; Apr. 7, 1986, Pub. L. 99-272, title XII, §§ 12303(a), 12304(a), 100 Stat. 292; Oct. 22, 1986, Pub. L. 99-514, § 2, title XVIII, § 1883(a)(5)(B), (b)(1)(A), (2)(A), (B), (3)(A), (4), (5), 100 Stat. 2095, 2916, 2917; Nov. 6, 1986, Pub. L. 99-603, title II, § 201(b)(1), title III, §§ 302(b)(1), 303(e)(1), 100 Stat. 3403, 3422, 3431.)

[1] So in original. Probably should be "(d)(6)".

REFERENCES IN TEXT

Parts B, C, D, and E of this subchapter, referred to in subsec. (a)(9), (11), (19)(C), (F), (20), (27), and (28), are classified to sections 620 et seq., 630 et seq., 651 et seq., and 670 et seq., respectively, of this title.

The Food Stamp Act of 1977, referred to in subsec. (a), is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

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

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-514, § 1883(b)(5), realigned margins in concluding provisions.

Pub. L. 99-514, § 1883(b)(4)(A), provided for technical corrections relating to closing punctuation in pars. (34) through (39).

Subsec. (a)(14). Pub. L. 99-514, § 1883(a)(5)(B), repealed Pub. L. 98-369, § 2663(c)(1)(B). See 1984 Amendment note below.

Subsec. (a)(26)(C). Pub. L. 99-272, § 12304(a), added subpar. (C).

Subsec. (a)(31)(A). Pub. L. 99-514, § 1883(b)(1)(A), struck out "(or such lesser amount as the Secretary may prescribe in the case of an individual not engaged in fulltime employment or not employed throughout the month)" after "such month".

Subsec. (a)(36). Pub. L. 99-514, § 1883(b)(4)(B), substituted a semicolon for a period, which amendment was previously made by Pub. L. 98-369, § 2624(a)(2).

Subsec. (a)(37). Pub. L. 99-514, § 1883(b)(4)(A), struck out "and" after "applied;".

Subsec. (a)(38). Pub. L. 99-514, § 1883(b)(2)(A), (B), substituted "section 606(a) of this title or in section 607(a) of this title (if such section is applicable to the State)," for "section 606(a) of this title," in subpar. (B) and realigned margins so as to remove concluding provisions beginning with "if such parent, brother, or sister is living" from subpar. (B), and relocate such provisions after and below subpar. (B).

Subsec. (a)(39). Pub. L. 99-514, § 1883(b)(3)(A), substituted "of 18" for "selected by the State pursuant to section 606(a)(2) of this title".

Subsec. (d)(1). Pub. L. 99-514, § 2, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (e)(2)(C). Pub. L. 99-272, § 12303(a), added subpar. (C).

Subsec. (f). Pub. L. 99-603, § 201(b)(1), added subsec. (f).

Subsec. (f)(1). Pub. L. 99-603, § 303(e)(1)(A), inserted reference to subsection (d)(7) of section 1161 of title 8.

Pub. L. 99-603, § 302(b)(1)(A), inserted reference to subsection (f) of section 1160 of title 8.

Subsec. (f)(2). Pub. L. 99-603, § 303(e)(1)(B), (C), inserted reference to aliens disqualified from receiving aid under subsection (d)(7) of section 1161 of title 8 and reference to adjustment of status under section 1161 of title 8.

Pub. L. 99-603, § 302(b)(1)(B), (C), inserted reference to aliens disqualified from receiving aid under subsection (f) of section 1160 of title 8 and reference to adjustment of status under section 1160 of title 8.

1984—Subsec. (a). Pub. L. 98-369, § 2663(c)(1)(E)(i), (ii), substituted "must—" for "must" preceding par. (1) and restructured and realigned the margins of all subdivisions of subsec. (a).

Pub. L. 98-369, § 2628(c), inserted "The Secretary may waive any of the requirements imposed under or in connection with paragraphs (13) and (14) of this subsection to the extent necessary to make such requirements compatible with the corresponding reporting and budgeting requirements by the Food Stamp Act of 1977." at end of subsec. (a).

Subsec. (a)(5). Pub. L. 98-369, § 2663(*l*)(1), substituted "Secretary" for "Administrator" in two places.

Pub. L. 98-369, § 2663(c)(1)(E)(iii), struck out "and" after the semicolon.

Subsec. (a)(6). Pub. L. 98-369, § 2663(*l*)(1), substituted "Secretary" for "Administrator" in two places.

Subsec. (a)(7)(B). Pub. L. 98-369, § 2626, designated existing provisions after "for purposes of this subparagraph" as cl. (i) and added cls. (ii) and (iii).

Subsec. (a)(8)(A)(ii). Pub. L. 98-369, § 2622, struck out "(or such lesser amount as the Secretary may prescribe in the case of an individual not engaged in fulltime employment or not employed throughout the month)" after "for such month".

Subsec. (a)(8)(A)(iv). Pub. L. 98-369, § 2623(a), inserted "(I)" after "equal to" and "(II)" after "plus".

Subsec. (a)(8)(A)(vi). Pub. L. 98-369, § 2640(c), added cl. (vi).

Subsec. (a)(8)(A)(vii). Pub. L. 98-369, § 2642(b), added cl. (vii).

Subsec. (a)(8)(B)(ii)(I). Pub. L. 98-369, § 2623(b), substituted two lettered subdivisions (a) and (b) in subcl. (I) for ", under subparagraph (A)(iv)," after "shall not disregard" and struck out "and subparagraph (A)(iv) has not already been applied to their income for four consecutive months while they were receiving aid under the plan" after "four months preceding such month".

Subsec. (a)(8)(B)(ii)(II). Pub. L. 98-369, § 2623(c), substituted "shall not apply the provisions of subclause (II) of such subparagraph to any month after such month, or apply the provisions of subclause (I) of such suhparagraph to any month after the eighth month following such month, for so long as he continues to receive aid under the plan, and shall not apply the provisions of either such subclause to any month thereafter" for "shall not apply the provisions of subparagraph (A)(iv) for so long as he continues to receive aid under the plan and shall not apply such provisions to any month thereafter".

Subsec. (a)(8)(C). Pub. L. 98-369, § 2625(a), added subpar. (C).

Subsec. (a)(9). Pub. L. 98-369, § 2663(c)(1)(A), substituted "use or disclosure" for "use of disclosure".

Pub. L. 98-369, § 2636, inserted "; but such safeguards shall not prevent the State agency or the local agency responsible for the administration of the State plan in the locality (whether or not the State has enacted legislation allowing public access to Federal welfare records) from furnishing a State or local law enforcement officer, upon his request, with the current address of any recipient if the officer furnishes the agency with such recipient's name and social security account number and satisfactorily demonstrates that such recipient is a fugitive felon, that the location or apprehension of such felon is within the officer's official duties, and that the request is made in the proper exercise of those duties".

Subsec. (a)(13). Pub. L. 98-369, § 2628(a), substituted "with respect to families who are required to report monthly to the State agency pursuant to paragraph (14) (and at the option of the State with respect to other families), provide that—" for "provide that—" in provisions preceding subpar. (A) and "(but only where the Secretary determines it to be appropriate, in the case of families who are required to report monthly to the State agency pursuant to paragraph (14))" for "but only where the Secretary determines it to be appropriate" in subpara. (A) and (B).

Subsec. (a)(14)(A). Pub. L. 98-369, § 2628(b), substituted "with respect to families in the category of recent work history or earned income cases (and at the option of the State with respect to families in other categories), provide (A) that" for "(A) provide that", "(with the prior approval of the Secretary in recent work history and earned income cases)" for "with the prior approval of the Secretary", and "upon a determination that" for "upon the State's showing to the satisfaction of the Secretary that".

Pub. L. 98-369, § 2663(c)(1)(B), which made amendment identical to Pub. L. 98-369, § 2628(b)(1), substituting "provide (A) that" for "(A) provide that" was repealed by Pub. L. 99-514, § 1883(a)(5)(B).

Subsec. (a)(15). Pub. L. 98-369, § 2663(c)(1)(E)(iv), substituted "paragraph" for "clause" in subpars. (A) and (B).

Subsec. (a)(17). Pub. L. 98-369, § 2632(b)(1), substituted "a child or relative applying for or receiving aid to families with dependent children, or any other person whose need the State considers when determining the income of a family," for "a person specified in paragraph (8)(A)(i) or (ii)" in provisions preceding subpar. (A).

Pub. L. 98-369, § 2632(b)(2), substituted "an amount of earned or unearned income" for "an amount of income" in provisions preceding subpar. (A).

Pub. L. 98-369, § 2632(a), inserted provisions following subpar. (B) relating to instances in which the State may recalculate the period of ineligibility for remaining months in the period.

Subsec. (a)(18). Pub. L. 98-369, § 2621, substituted "185 percent" for "150 percent".

Pub. L. 98-369, § 2642(a), inserted ", except that in determining the total income of the family the State may exclude any earned income of a dependent child who is a full-time student, in such amounts and for such period of time (not to exceed 6 months) as the State may determine".

Subsec. (a)(19)(A)(ix). Pub. L. 98-369, § 2631, added cl. (ix).

Subsec. (a)(19)(D). Pub. L. 98-369, § 2663(c)(1)(E)(v), substituted "paragraph (7)" for "section 602(a)(7) of this title".

Subsec. (a)(19)(F)(i). Pub. L. 98-369, § 2663(c)(1)(E)(iv), substituted "paragraph" for "clause".

Pub. L. 98-369, § 2663(c)(3)(B)(i), substituted "clauses (A) through (D)" for "clauses (A) through (E)".

Pub. L. 98-369, § 2663(c)(1)(C), substituted "or section 672" for "or section 608".

Pub. L. 98-369, § 2634(a), substituted "will be made unless the State agency, after making reasonable efforts, is unable to locate an appropriate individual to whom such payments can be made" for "will be made".

Subsec. (a)(19)(F)(iv), (v). Pub. L. 98-369, § 2663(c)(1)(E)(iv), substituted "paragraph" for "clause".

Subsec. (a)(19)(G)(iv). Pub. L. 98-369, § 2663(c)(1)(D), struck out the comma before "that".

Subsec. (a)(22). Pub. L. 98-369, § 2633, inserted "(including a current recipient whose overpayment occurred during a prior period of eligibility)" after "current recipient of such aid" in subpar. (A) and "except that no recovery need be attempted or carried out under subparagraph (B) in any case, other than a case involving fraud on the part of the recipient, where (as determined by the State agency in accordance with criteria for determining cost-effectiveness, and with dollar limitations, which shall be prescribed by the Secretary in regulations) the cost of recovery would equal or exceed the amount of the overpayment involved;" after subpar. (C).

Subsec. (a)(25). Pub. L. 98-369, § 2651(b)(1), in amending par. (25) generally, substituted "provide that information is requested and exchanged for purposes of income an eligibility verification in accordance with a State system which meets the requirements of section 1320b-7 of this title" for "provide (A) that, as a condition of eligibility under the plan, each applicant for or recipient of aid shall furnish to the State agency his social security account number (or numbers, if he has more than one such number), and (B) that such State agency shall utilize such account numbers, in addition to any other means of identification it may determine to employ in the administration of such plan".

Subsec. (a)(26)(B). Pub. L. 98-369, § 2663(c)(3)(B)(ii), substituted "clauses (A) through (D)" for "subparagraphs (A) through (E)".

Pub. L. 98-369, § 2634(b), inserted "unless the State agency, after making reasonable efforts, is unable to locate an appropriate individual to whom such payments can be made".

Subsec. (a)(27). Pub. L. 98-378, § 9(a)(2), substituted "operates a child support program in substantial compliance with such plan" for "operate a child support program in conformity with such plan".

Subsec. (a)(29). Pub. L. 98-369, § 2651(b)(2), struck out par. (29) which provided that, effective Oct. 1, 1979, certain wage information would be requested and utilized.

Subsec. (a)(36). Pub. L. 98-369, § 2639(a), (c), temporarily added par. (36). Former pars. (36) were struck out. See Effective and Termination Dates of 1983 and 1984 Amendment notes below.

Subsec. (a)(37). Pub. L. 98-369, § 2624(a), added par. (37).

Subsec. (a)(38), (39). Pub. L. 98-369, § 2640(a), added pars. (38) and (39).

Subsec. (c). Pub. L. 98-369, § 2663(c)(1)(F), substituted "paragraph" for "clause" in three places.

Subsec. (d)(1). Pub. L. 98-369, § 2629, substituted "For purposes of paragraphs (7) and (8) of subsection (a) of this section, any refund of Federal income taxes made by reason of section 32 of the Internal Revenue Code of 1954 (relating to earned income credit) and any payment made by an employer under section 3507 of such Code (relating to advance payment of earned income credit) shall be considered earned income" for "For purposes of this part, an individual's 'income' shall also include, to the extent and under the circumstances prescribed by the Secretary, an amount (which shall be treated as earned income for purposes of this part) equal to the earned income advance amount (under section 3507(a) of the Internal Revenue Code of 1954) that is (or, upon the filing of an earned income eligibility certificate, would be) payable to such individual.".

Subsec. (d)(2). Pub. L. 98-369, § 2663(c)(1)(G), substituted "section 32" and "section 32(g)" for "section 43" and "section 43(g)", respectively.

1983—Subsec. (a)(36). Pub. L. 98-21 temporarily amended par. (36) by substituting "shall not include as income any support or maintenance assistance furnished to or on behalf of the family which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) is based on need for such support and maintenance, including assistance received to assist in meeting the costs of home energy (including both heating and cooling), and which" for "shall not include as income any assistance received to assist in meeting the costs of home energy, including both heating and cooling, which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) (A) is based on need for such assistance, and (B)" after "the State agency". See Effective and Termination Dates of 1983 Amendments note below.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 1883(a)(5) of Pub. L. 99-514 provided in part that amendment by section 1883(a)(5)(B) of Pub. L. 99-514 is effective July 18, 1984.

Section 1883(b)(1)(B) of Pub. L. 99-514 provided that: "The amendment made by this paragraph [amending this section] shall be effective beginning October 1, 1984."

Section 1883(b)(2)(C) of Pub. L. 99-514 provided that: "The amendments made by this paragraph [amending this section] shall be effective beginning October 1, 1984."

Section 1883(b)(3)(B) of Pub. L. 99-514 provided that: "The amendment made by subparagraph (A) [amending this section] shall be effective beginning October 1, 1984."

Section 1883(b)(4)(B) of Pub. L. 99-514 provided in part that amendment by section 1883(b)(4)(B) of Pub. L. 99-514 is effective July 18, 1984.

Amendment by section 1883(b)(5) of Pub. L. 99-514 effective Oct. 22, 1986, see section 1883(f) of Pub. L. 99-514, set out as a note under section 402 of this title.

Section 12303(b) of Pub. L. 99-272 provided that: "The amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986], but shall apply only with respect to sums expended by the States for the purposes described in section 403(a)(3)(B) of the Social Security Act [42 U.S.C. 603(a)(3)(B)] on or after the date of the enactment of this Act."

Section 12304(b) of Pub. L. 99-272 provided that: "The amendments made by subsection (a) [amending this section] shall apply to calendar quarters beginning on or after the date of the enactment of this Act [Apr. 7, 1986]."

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENTS

Section 9(c) of Pub. L. 98-378 provided that: "The amendments made by this section [amending sections 602, 603, and 652 of this title] shall be effective on and after October 1, 1983."

Section 2624(b) of Pub. L. 98-369 provided that:

"(1) The amendments made by this section [enacting subsec. (a)(37) of this section] shall apply with respect te months beginning on or after October 1, 1984.

"(2) Such amendments shall apply with respect to families which ceased to receive aid under the applicable State plan (for the reason stated in section 402(a)(37) of the Social Security Act as added by subsection (a) of this section [subsec. (a)(37) of this section]) before October 1, 1984, as well as with respect to families which cease to receive aid (for that reason) on or after that date; but any family which ceased to receive such aid before that date, in order to be eligible te be treatod as receiving aid under the plan for any period after ceasing to receive such aid (as provided for in such section 402(a)(37))—

"(A) must make its application for such treatment no later than the cnd of the sixth month after the month in which final regulations governing the application of such section 402(a)(37) are promulgated by the Secretary of Health and Human Services (and in the case of any such family the term 'last month for which the family actually received such aid' as used in such section 402(a)(37) means the month before the month in which the family makes such application);

"(B) must be a family that would have been continuously eligible for aid under the State plan (without regard to the amendments made by this section), from the time it ceased to receive such aid te the time of its application under subparagraph (A), if section 402(a)(6)(A)(iv) of such Act [subsec. (a)(8)(A)(iv) of this section] applied; and

"(C) must fully disclose, in its application under subparagraph (A), any health insurance coverage which its members may have in effect."

Section 2625(b) of Pub. L. 98-369 provided that: "The amendments made by subsection (a) [enacting subsec. (a)(8)(C) of this section] shall become effective on the dato of the enactment of this Act [July 18, 1984]."

Section 2632(b)(2) of Pub. L. 98-369 provided in part that the amendment by section 2632(b)(2) of Pub. L. 98-369 is effective July 18, 1984.

Section 2639(d) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 602(a)(36) and 1382a(b)(13) of this title and repealing sectlon 545(a)-(c) of Pub. L. 97-424 and section 404 of Pub. L. 98-21, which had previously amended sections 602(a)(36) and 1382a(b)(13) of this title and had provided effective dates for those prior amendments] shall be effective with respect to months which begin after September 30, 1984; but sections 402(a)(36) and 1612(b)(13) of the Social Security Act [sections 602(a)(36) and 1382a(b)(13) of this title] (as amended by subsections (a) and (b) of this section) shall be effective only with respect to months which end before October 1, 1967."

Section 2642(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending subsec. (a) of this section] shall become effective June 1, 1984."

Section 2646 of Pub. L. 98-369 provided that: "Except as otherwise specifically provided in this subtitle [subtitle B, sections 2611 to 2646 of Pub. L. 98-369], the provisions of parts 1 and 2 [sections 2611 to 2642 of Pub. L. 98-369, enacting section 1320b-6 of this title, amending sections 602, 609, 614, 615, 657, 1320a-6, 1382 to 1362b, 1382j, and 1383 of this title and section 51 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under sections 602, 609, 614, 1320a-6, 1382a, and 1383 of this title and section 51 of Title 26] and the amendments made thereby shall take effect on October 1, 1984."

Amendment by section 2651(b)(1), (2), of Pub. L. 98-369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(*l*)(2) of Pub. L. 98-369, set out as an Effective Date note under section 1320b-7 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 401 of this title.

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENTS

Section 404(c) of Pub. L. 98-21, which had provided that the amendments made by section 404 [amending sections 602 and 1382a of this title] were effective with respect to months which began after April 1983 and ended before Oct. 1, 1984, was repealed by section 2369(c)(2), (d) of Pub. L. 98-369, effective with respect to months which begin after Sept. 30, 1984.

Section 545(c) of Pub. L. 97-424, which had provided that the amendments made by subsections (a) and (b) of section 545 [amending sections 602 and 1382a of this title] were effective with respect to home energy assistance received in months beginning on or after Jan. 6, 1983, and prior to July 1, 1985, was repealed by section 2639(c)(1), (d) of Pub. L. 98-369, effective with respect to months which begin after Sept. 30, 1984.

WAIVER FOR NONCOMPLIANCE WITH RETROACTIVE AMENDMENTS

Section 1883(b)(11) of Pub. L. 99-514 provided that:

"(A) The failure by a State to comply with the provisions of any amendment made by paragraph (1), (2), (3), or (10) [enacting section 678 of this title and amending this section] or the imposition by a State of any requirement inconsistent with such provisions, in the administration of its plan approved under section 402(a) of the Social Socurity Act [42 U.S.C. 602(a)] during the period beginning October 1, 1984, and ending on the day preceding the date of the enactment of this Act [Oct. 22, 1986], shall not be considered to be failure to comply substantially with a provision required to be included in the State's plan, or to constitute (solely by reason of such inconsistency) the imposition of a prohibited requirement in the administration of the plan, for purposes of section 404(a) of such Act [42 U.S.C. 604(a)].

"(B) No Stato shall be considered to have made any overpayment or underpayment of aid, under its plan approved under section 402(a) of the Social Security Act, by reason of its compliance or noncompliance with the provisions of any amendment made by paragraph (1), (2), (3), or (10) (or solely because of the extent to which its requirements are consistent or inconsistent with such provisions) in the administration of the plan during the period specified in subparagraph (A)."

AFDC GUIDELINES

Pub. L. 99-570, title XI, § 11005(d), Oct. 27, 1988, 100 Stat. 3207-169, provided that: "No later than six months after the dato of enactment of this act [Oct. 27, 1986] and after consultation with the States administering plans under title IV of the Social Security Act [42 U.S.C. 601 et seq.], the Secretary of Health and Human Services shall issue guidelines to the States for providing benefits under title IV to a dependent child who does not reside in a permanent dwelling or does not have a fixed home or mailing address."

WISCONSIN CHILD SUPPORT INITIATIVE

Section 22 of Pub. L. 98-378 provided that:

"(a)(1) If the Stato of Wisconsin requests the Secretary of Health and Human Services to waive the re-

quirements of parts A and D of title IV of the Social Security Act [42 U.S.C. 601 et seq., 651 et seq.], or to waive the requirements of part D and only those requirements of part A of such Act as relate to the provision of aid to dependent children as defined (without regard to section 407 [42 U.S.C. 607]) in section 406(a) of the Social Security Act [42 U.S.C. 606(a)] (hercafter referred to in this section as 'dependent children in single-parent families'), in order to permit the State to make an adequate test in any county or counties, or throughout the State, of its Child Support Initiative, the Secretary shall waive such requirements if—

"(A) the State provides a complete description, in accordance with paragraph (2), of the program, known as the Initiative, which it will operate in place of the programs under such parts A and D, and makes the description readily available to the public throughout the State;

"(B) the Governor provides assurances that, under the Initiative, assistance will be provided to all children in need of financial support, and the State will continue to operate an effective child support enforcement program;

"(C) the State agrees that, during the conduct of such test, it will continue to determine eligibility for medical assistance under the Stato plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], applying the criteria (insofar as may be applicable to members of families with dependent children affected by the Initiative) in effect under its State plan approved under part A of title IV for the month preceding the month in which the Initiative (approved under this section) becomes effective, except that such criteria shall be deemed to have been changed to the extent necessary to comply with generally applicable changes in Federal law or regulations occurring after the date of the enactment of this Act [Aug. 16, 1984];

"(D) the State specifies measurable performance objectives, submits an evaluation plan (including criteria for evaluating the Initiative), and agrees to submit interim and final evaluations and reports, at such time or times and containing such information, as the Secretary may require; and

"(E) the State agrees to obtain, at least once every two years, a financial and compliance audit of the funds received under this section and te obtain, after the close of the operation of the Initiative under this section, such an audit and make it publio within the State on a timely basis and provide a copy to the Secretary within 30 days after its completion.

"(2) The program description provided under paragraph (1)(A) shall describe in detail how the proposed Initiative will affect children and families, with specific reference to the principles for calculating benefits and establishing and enforcing child support obligations. The description shall also include estimates of cost and program effects and provide other relcvant information necessary for the Secretary to determine whether the financial well-being of children and their families will be adversely affected by the operation of the Initiative.

"(b) The Child Support Initiative proposed by the State of Wisconsin as detailed in the program description submitted to the Secretary, and the related requested waivers, shall become effective within 120 days after its submission unless the Secretary determines that the financial well-being of children in the State will be adversely affected by the Initiative. The Secretary shall notify the State in writing that, effective with the beginning of the following quarter (or of such later quarter as the State may select), the State may operate its Child Support Initiative instead of its programs of aid to families with dependent children (or, if the State had so requested, instead of its program of aid to dependent children in single-parent families) and child support enforcement in such county or counties, or on a statewide basis, as the State has indicated in ita request. Except as specifically provided in subsection (c), no amount will bc payable for any quarter under section 403(a) (or under section 403(a) with respect to single-parent families, if the Stato had so requested), 455(a), or 458 of the Social Security Act [42 U.S.C. 603(a), 655(a), 658] with respect to such county or counties in which the Initiative is in effect.

"(c)(1) For each quarter during which such program is in effect throughout the Stato, the Secrctary will pay to the State the sum of its proportionate share (as defined in paragraph (4)(A)) of each of the following:

"(A) the amount advanced by the Secretary to all the other States (as defined in section 1101(a) of the Social Security Aot [42 U.S.C. 1301(a)]) for such quarter with respect to section 403(a)(1) and (2) of such Act [42 U.S.C. 603(a)(1), (2)];

"(B) the amount so advanced by the Secretary with respect te section 403(a)(3) of such Act;

"(C) the amount so advanced by the Secretary with respect te section 455(a) of such Act [42 U.S.C. 655(a)]; and

"(D) the amount so advanced by the Secretary with respect to section 458(a) of such Act [42 U.S.C. 658(a)],

reduced by so much of its proportionate sharc of support collections on behalf of individuals receiving aid to families with dependent children (as defined in paragraph (4)(B)) as would have been credited to the Federal Government under section 457(b) of such Act [42 U.S.C. 657(b)] had such collections been made in the last quarter of fiscal year 1986.

"(2) If in any quarter the Initiative approved under this section is in operation in fewer than all the counties in the State, the amount paid to the State with respect to the counties to which the waiver under subsection (a) applies shall equal (in lieu of the amount specified in paragraph (1)) the proportionate share with respect to the counties in which the Initiative is operated (as defined in paragraph (5)(A)) of the amount advanced to the State under the four authorities specified in paragraph (1) with respect to all the other counties for such quarter, reduced by so much of the proportionate share of support collections (as defined in paragraph (5)(B)) with respect to the counties in whioh the Initiative is operated, as would have been credited to the Federal Government under section 457(b) of such Act [42 U.S.C. 657(b)] had such collections been made in the last quarter of fiscal year 1986.

"(3) Payment under this subsection shall be estimated by the Secretary before the beginning of each quarter during which the Initiative is in effect on the basis of the advances made under parts A and D of title IV of the Social Security Act [42 U.S.C. 601 et seq., 651 et seq.] for such quarter, and the Secretary shall make payments for such quarter on a monthly basis (with each payment made no later than the beginning of the month involved), in the amounts so estimated, and adjusted as necessary to reflect the amount of any previously made overpayment or underpayment under this section. Payment of any amount determined with respect te paragraphs (1)(A) and (1)(B) shall be made from amounts appropriated to carry out part A of title IV of the Social Security Act for the appropriate fiscal year; payment of any amount determined with respect to paragraphs (1)(C) and (1)(D) shall be made from amounts appropriated to carry out part D of title IV of the Social Security Act.

"(4)(A) The State's proportionate share of each amount enumerated in paragraph (1) shall be the portion of such amount that bears the same ratio te such amount as the corresponding portion advanced to the State for quarters in fiscal years 1984 through 1986 bears to the total corresponding amount advanced to all the other States for such quarters.

"(B) The State's proportionate share of support collections means the amount that bears the same ratio to such collections on behalf of individuals receiving aid to families with dependent children by all the other States for the quarter involved as such collec-

tions by the State for quarters in fiscal years 1984 through 1986 bear to the total of such collections by all the other States for such quarters.

"(5)(A) The proportionate share with respect to the counties in which the Initiative is operated, in the case of—

"(i) the amount advanced to the State with respect to all other counties under section 403(a)(1) of the Social Security Act [42 U.S.C. 603(a)(1)];

"(ii) the amount so advanced under section 403(a)(3) of such Act [42 U.S.C. 603(a)(3)];

"(iii) the amount so advanced under section 455(a) of such Act [42 U.S.C. 655(a)]; and

"(iv) the amount so advanced with respect to section 458(a) of such Act [42 U.S.C. 658(a)],

is the sum of such amounts, each having been multiplied by the ratio of (I) the corresponding amount advanced with respect to such counties for all quarters in fiscal years 1984 through 1986 to (II) the corresponding amount advanced with respect to all the other counties in the State for all such quarters.

"(B) The proportionate share of support collections for any quarter, with respect to the counties in which the Initiative is operated, means the amount that bears the same ratio to such collections on behalf of individuals receiving aid to families with dependent children with respect to all the other counties in the State for such quarter as such collections by such counties for quarters in fiscal years 1984 through 1986 bear to the total of such collections by all the other counties in the State for such quarters.

"(6) If the State requests, under subsection (a), waiver of only those requirements under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] as relate to the provision of aid to dependent children in single-parent families, and continues to operate its program of aid to families with dependent children deprived by reason of the unemployment of a parent—

"(A) the State's proportionate share of the amount specified in paragraph (1)(A) (and only that amount) shall be computed under paragraph (4) by application of the ratio of (i) the amount advanced to the State, under section 403(a)(1) of the Social Security Act [42 U.S.C. 603(a)(1)] for quarters in fiscal years 1984 through 1986 with respect to expenditures in the form of aid to dependent children in single-parent families, to (ii) the amount advanced to all the other States, under section 403(a)(1) and (2) of such Act with respect to such expenditures, rather than by application of the ratio specified in paragraph (4); and

"(B) part A of title IV of such Act shall continue to apply to the State's program of aid te families with dependent children deprivcd by reason of the unemployment of a parent; except that section 403(a)(3) shall not apply during the period that, or in the part or parts of the State where, the Initiative is in effect.

"(d)(1) The State may cease to conduct the Initiative under this section and (if it so chooses) return to the administration of its plans approved under part A and part D of title IV of the Social Security Act [42 U.S.C. 601 et seq., 651 et seq.] upon the provision to the Secretary of at least 3 months advance notice (or such greater advance notice as may be necessary so that administration of such plans will resume at the beginning of a quarter in the fiscal year).

"(2) The Secretary may terminato approval of the Initiative upon the giving of at least 3 months advance notice (or such greater advance notice as may be necessary as specified in paragraph (1)) to the State if it is determined that the financial well-being of children in the State (or county or counties involved) would be better achieved by the operation of programs under part A and part D of title IV of the Social Security Act [42 U.S.C. 601 et seq., 651 et seq.].

"(e) This section shall be in effect for quarters beginning after September 30, 1986, and ending before October 1, 1994."

UTILITY PAYMENTS MADE BY TENANTS IN ASSISTED HOUSING

Pub. L. 98-181, title II, § 221, Nov. 30, 1983, 97 Stat. 1188, as amended by Pub. L. 98-479, title I, § 102(g)(3), Oct. 17, 1984, 98 Stat. 2222, provided that: "Notwithstanding any other provision of law, for purposes of determining eligibility, or the amount of benefits payable, under part A of title IV of the Social Security Act [this part], any utility payment made in lieu of any rental payment by a person living in a dwelling unit in a lower income housing project assisted under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] or section 236 of the National Housing Act [12 U.S.C. 1715z-1] shall be considered to be a shelter payment."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 603, 604, 606, 607, 608, 609, 614, 615, 631, 633, 636, 643, 644, 652, 654, 656, 658, 664, 666, 672, 673, 677, 1202, 1308, 1315, 1320b-7, 1352, 1396a, 1396b, 1396s, 4728 of this title; title 7 sections 2014, 2015; title 11 section 523; title 20 section 2712; title 25 sections 683, 686, 689, 996; title 26 section 6402; title 29 section 1603; title 31 section 3803.

§ 603. Payments to States

(a) Computation of amounts

From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid and services to needy families with children, for each quarter, beginning with the quarter commencing October I, 1958—

[*See main edition for text of (1) and (2)*]

(3) in the case of any State, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan—

(A) 100 percent of so much of such expenditures as are for the costs of the implementation and operation of the immigration status verification system described in section 1320b-7(d) of this title,

[*See main edition for text of (B) and (C)*]

except that no payment shall be made with respect to amounts expended in connection with the provision.of any service described in section 1397a(a) of this title other than services furnished under section 602(a)(35)(B) of this title (as described in the parenthctical phrase in subparagraph (C)), and other than services the provision of which is required by section 602(a)(19) of this title to be included in the plan of the State, or which is a service provided in connection with a community work experience program or work supplementation program under section 609 or 614 of this title; and

[*See main edition for text of (4) and (5)*]

No payment shall be made under this subsection with respect to amounts paid to supplement or otherwise increase the amount of aid to families with dependcnt children found payable in accordance with section 602(a)(13) of this title if such amount is determined to have

been paid by the State in recognition of the current or anticipated needs of a family (other than with respect to the first or first and second months of eligibility), but any such amount, if determined to have been paid by the State in recognition of the difference between the current or anticipated needs of a family for a month based upon actual income or other relevant circumstances for such month, and the needs of such family for such month based upon income and other relevant circumstances as retrospectively determined under section 602(a)(13)(A)(ii) of this title, shall not be considered income within the meaning of section 602(a)(13) of this title for the purpose of determining the amount of aid in the succeeding months.

(b) Method of computation and payment

The method of computing and paying such amounts shall be as follows:

[*See main edition for text of (1)*]

(2) The Secretary of Health and Human Services shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health and Human Services, (A) reduced or increased, as the case may be, by any sum by which he finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State for such quarter, (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health and Human Services, of the net amount recovered during any prior quarter by the State or any political subdivision thereof with respect to aid to families with dependent children furnished under the State plan, and (C) reduced by such amount as is necessary to provide the "appropriate reimbursement of the Federal Government" that the State is required to make under section 657 of this title out of that portion of child support collections retained by it pursuant to such section; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health and Human Services for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Department of the Treasury and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Health and Human Services, the amount so certified.

[*See main edition for text of (c) to (g)*]

(h) Reduction in amount; suspension; continuation; determination of substantial compliance by State

(1) Notwithstanding any other provision of this chapter, if a State's program operated under part D of this subchapter is found as a result of a review conducted under section 652(a)(4) of this title not to have complied substantially with the requirements of such part for any quarter beginning after September 30, 1983, and the Secretary determines that the State's program is not complying substantially with such requirements at the time such finding is made, the amounts otherwise payable to the State under this part for such quarter and each subsequent quarter, prior to the first quarter throughout which the State program is found to be in substantial compliance with such requirements, shall be reduced (subject to paragraph (2)) by—

(A) not less than one nor more than two percent, or

(B) not less than two nor more than three percent, if the finding is the second consecutive such finding made as a result of such a review, or

(C) not less than three nor more than five percent, if the finding is the third or a subsequent consecutive such finding made as a result of such a review.

(2)(A) The reductions required under paragraph (1) shall be suspended for any quarter if—

(i) the State submits a corrective action plan, within a period prescribed by the Secretary following notice of the finding under paragraph (1), which contains steps necessary to achieve substantial compliance within a time period which the Secretary finds to be appropriate;

(ii) the Secretary approves such corrective action plan (and any amendments thereto) as being sufficient to achieve substantial compliance; and

(iii) the Secretary finds that the corrective action plan (and any amendment thereto approved by the Secretary under clause (ii)), is being fully implemented by the State and that the State is progressing in accordance with the timetable contained in the plan to achieve substantial compliance with such requirements.

(B) A suspension of the penalty under subparagraph (A) shall continue until such time as the Secretary determines that—

(i) the State has achieved substantial compliance,

(ii) the State is no longer implementing its corrective action plan, or

(iii) the State is implementing or has implemented its corrective action plan but has failed to achieve substantial compliance within the appropriate time period (as specified in subparagraph (A)(i)).

(C)(i) In the case of a State whose penalty suspension ends pursuant to subparagraph (B)(i), the penalty shall not be applied.

(ii) In the case of a State whose penalty suspension ends pursuant to subparagraph (B)(ii), the penalty shall be applied as if the suspension had not occurred.

(iii) In the case of a State whose penalty suspension ends pursuant to subparagraph (B)(iii), the penalty shall be applied to all quarters ending after the expiration of the time period specified in such subparagraph (and prior to the first quarter throughout which the State program is found to be in substantial compliance).

(3) For purposes of this subsection, section 602(a)(27) of this title, and section 652(a)(4) of this title, a State which is not in full compliance with the requirements of this part shall be determined to be in substantial compliance with such requirements only if the Secretary determines that any noncompliance with such requirements is of a technical nature which does not adversely affect the performance of the child support enforcement program.

[*See main edition for text of (i)*]

(j) Incentive adjustments; "dollar error rate of aid" defined

In the case of Puerto Rico, Guam, or the Virgin Islands, if the dollar error rate of aid furnished by such State under its State plan approved under this part with respect to any six-month period, as based on samples and evaluations thereof, is—

[*See main edition for text of (1) and (2)*]

For purposes of this subsection (i) the term "dollar error rate of aid" means the tetal of the dollar error rates of aid for (I) payments to ineligible families receiving assistance; (II) overpayments to eligible families receiving assistance; (III) underpayments to eligible families receiving assistance; and (IV) nonpayments to eligible families not receiving assistance due to erroneous terminations or denials, and (ii) the term "erroneous excess payments" means the total of (I) erroneous payments to ineligible families receiving assistance, and (II) overpayments to eligible families receiving assistance.

(Aug. 14, 1935, ch. 531, title IV, § 403, 49 Stat. 628; Aug. 10, 1939, ch. 666, title IV, § 402, 53 Stat. 1380; Aug. 10, 1946, ch. 951, title V, § 502, 60 Stat. 992; June 14, 1948, ch. 468, § 3(b), 62 Stat. 439; Aug. 28, 1950, ch. 809, title III, pt. 2, § 322(a), pt. 6, § 361(c), (d), 64 Stat. 550, 558; July 18, 1952, ch. 945, § 8(b), 66 Stat. 778; Sept. 1, 1954, ch. 1206, title III, § 303(a), 68 Stat. 1097; Aug. 1, 1956, ch. 836, title III, §§ 302, 312(c), 342, 351(a), 70 Stat. 847, 849, 852, 854; Aug. 28, 1958, Pub. L. 85-840, title V, § 502, 72 Stat. 1048; July 25, 1962, Pub. L. 87-543, title I, §§ 101(a)(2), (b)(2)(A)-(C), 104(a)(3)(C), 108(b), (c), 76 Stat. 174, 180, 185, 190; July 30, 1965, Pub. L. 89-97, title I, § 122, title IV, § 401(c), 79 Stat. 353, 415; Jan. 2, 1968, Pub. L. 90-248, title II, §§ 201 (c)-(e)(3), 205(b), 206(a), 207(b), 208, 241(b)(2), (3), 81 Stat. 879, 880, 892-894, 916; June 28, 1968, Pub. L. 90-364, title III, § 301, 82 Stat. 273; July 9, 1969, Pub. L. 91-41, § 3, 83 Stat. 45; Dec. 28, 1971, Pub. L. 92-223, § 3(a)(8), (9), 85 Stat. 805; Oct. 20, 1972, Pub. L. 92-512, title III, § 301(b)-(d), 86 Stat. 946, 947; Oct. 30, 1972, Pub. L. 92-603, title II, §§ 299E(d), 299F, 86 Stat. 1462, 1463; Jan. 4, 1975, Pub. L. 93-647, §§ 3(a)(3), (4), (e)(2), 5(b), 101(c)(6)(A), 88 Stat. 2348-2350, 2360; Aug. 9, 1975, Pub. L. 94-88, title II, § 204, 89 Stat. 435; Nov. 12, 1977, Pub. L. 95-171, § 3(a)(1), 91 Stat. 1354; Dec. 20, 1977, Pub. L. 95-216, title IV, §§ 401, 402(a), 91 Stat. 1559, 1560; June 9, 1980, Pub. L. 96-265, title IV, §§ 401(g), (h), 406(a), 407(c), 94 Stat. 462, 465, 467; Aug. 13, 1981, Pub. L. 97-35, title XXI, §§ 2181(a)(1), 2184(b)(1), title XXIII, §§ 2307(b), 2315(b), 2317(a), 2319(a)-(c), 2353(b)(1), (d), 95 Stat. 815, 817, 848, 855-857, 872; Sept. 3, 1982, Pub. L. 97-248, title I, §§ 154(b), 156(a)-(c), 157(a), 96 Stat. 397-399; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(e)(2), (j)(2)(B)(i), (3)(B)(i), 98 Stat. 1166, 1170, 1171; Aug. 16, 1984, Pub. L. 98-378, § 9(b), 98 Stat. 1316; Nov. 6, 1986, Pub. L. 99-603, title I, § 121(b)(1), 100 Stat. 3390.)

REFERENCES IN TEXT

Part D of this subchapter, referred to in subsec. (h)(1), is classified to section 651 et seq. of this title.

AMENDMENTS

1986—Subsec. (a)(3)(A). Pub. L. 99-803 added subpar. (A).

1984—Subsec. (a)(3). Pub. L. 93-369, § 2663(j)(3)(B)(i), struck out "of Health, Education, and Welfare" after "Secretary" in provisions preceding subpar. (A).

Subsec. (b)(2). Pub. L. 98-369, § 2663(j)(2)(B)(i), substituted "Health and Human Services" for "Health, Education, and Welfare" wherever appearing.

Subsec. (b)(3). Pub. L. 98-369, § 2663(c)(2)(A), substituted "the Fiscal Service of the Department of the Treasury" for "the Division of Disbursement of the Treasury Department".

Pub. L. 98-369, § 2663(j)(2)(B)(i), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (h). Pub. L. 98-375 amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: "Notwithstanding any other provision of this chapter, the amount payable to any State under this part for quarters in a fiscal year shall with respect to quarters beginning after December 31, 1976, be reduced by 5 per centum of such amount if such State is found by the Secretary as the result of the annual audit to have failed to have an effective program meeting the requirements of section 602(a)(27) of this title in any fiscal year beginning after September 30, 1976 (but, in the case of the fiscal year beginning October 1, 1976, only considering the second, third, and fourth quarters thereof)."

Subsec. (j). Pub. L. 98-369, § 2663(c)(2)(B), struck out the comma after "excess payments" in cl. (ii) of last sentence.

1982—Subsec. (j). Pub. L. 97-248, § 156(c), substituted "In the case of Puerto Rico, Ouam, or the Virgin Islands, if the dollar error rate of aid furnished by such State" for "If the dollar error rate of aid furnished by a State".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-603 effective Oct. 1, 1987, see section 121(c)(2) of Pub. L. 99-603, set out as a note under section 502 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-378 effective Oct. 1, 1983, see section 9(c) of Pub. L. 98-378, set out as an Effective and Termination Dates of 1984 Amendments note under section 602 of this title.

Amendment by Pub. L. 98-369 effective July 18, 1964, but not te be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

QUALITY CONTROL STUDIES AND PENALTY MORATORIUM

Pub. L. 99-272, title XII, § 12301, Apr. 7, 1986, 100 Stat. 291, as amended by Pub. L. 99-514, title XVII, § 1710, Oct. 22, 1986, 100 Stat. 2783, provided that:

"(a) STUDIES.—(1) The Secretary of Health and Human Services (hereafter referred to in this section as the 'Secretary') shall conduct a study of quality

control systems for the Aid to Families with Dependent Children Program under title IV-A of the Social Security Act [42 U.S.C. 601 et seq.] and for the Medicaid Program under title XIX of such Act [42 U.S.C. 1396 et seq.]. The study shall examine how best to operate such systems in order to obtain information which will allow program managers to improve the quality of administration, and provide reasonable data on the basis of which Federal funding may be withheld for States with excessive levels of erroneous payments.

"(2) The Secretary shall also contract with the National Academy of Sciences to conduct a concurrent independent study for the purpose described in paragraph (1). For purposes of such study, the Secretary shall provide to the National Academy of Sciences any relevant data available to the Secretary at the onset of the study and on an ongoing basis.

"(3) The Secretary and the National Academy of Sciences shall report the results of their respective studies to the Congress within one year after the date the Secretary and the National Academy of Sciences enter into the contract required under paragraph (2).

"(b) MORATORIUM ON PENALTIES.—(1) During the 24-month period beginning with the first calendar quarter which begins after the date of the enactment of this Act [Apr. 7, 1986] (hereafter in this section referred to as the 'moratorium period'), the Secretary shall not impose any reductions in payments to States pursuant to section 403(i) of the Social Security Act [42 U.S.C. 603(i)] (or prior regulations), or pursuant to any comparable provision of law relating to the programs under title IV-A of such Act [42 U.S.C. 601 et seq.] in Puerto Rico, Guam, the Virgin Islands, American Samoa, or the Northern Mariana Islands.

"(2) During the moratorium period, the Secretary and the States shall continue to operate the quality control systems in effect under title IV-A of the Social Security Act, and to calculate the error rates under the provisions referred to in paragraph (1).

"(c) RESTRUCTURED QUALITY CONTROL SYSTEMS.—(1) Not later than 6 months after the date on which the results of both studies required under subsection (a)(3) have been reported, the Secretary shall publish regulations which shall—

"(A) restructure the quality control systems under titles IV-A and XIX of the Social Security Act [42 U.S.C. 601 et seq.) 1396 et seq.] to the extent the Secretary determines to be appropriate, taking into account the studies conducted under subsection (a); and

"(B) establish, taking into account the studies conducted under subsection (a), criteria for adjusting the reductions which shall be made for quarters prior to the implementation of the restructured quality control systems so as to eliminate reductions for those quarters which would not be required if the restructured quality control systems had been in effect during those quarters.

"(2) Beginning with the first calendar quarter after the moratorium period, the Secretary shall implement the revised quality control systems, and shall reduce payments to States—

"(A) for quarters after the moratorium period in accordance with the restructured quality control systems; and

"(B) for quarters in and before the moratorium period, as provided under the regulations described in paragraph (1)(B).

"(d) EFFECTIVE DATE.—This section shall become effective on the date of the enactment of this Act [Apr. 7, 1986]."

§ 606. Definitions

When used in this part—

[*See main edition for text of* (a)]

(b) The term "aid to families with dependent children" means money payments with respect to a dependent child or dependent children, or, at the option of the State, a pregnant woman but only if it has been medically verified that the child is expected to be born in the month such payments are made or within the three-month period following such month of payment, and who, if such child had been born and was living with her in the month of payment, would be eligible for aid to families with dependent children, and includes (1) money payments to meet the needs of the relative with whom any dependent child is living (and the spouse of such relative if living with him and if such relative is the child's parent and the child is a dependent child by reason of the physical or mental incapacity of a parent or is a dependent child under section 607 of this title), and (2) payments with respect to any dependent child (including payments to meet the needs of the relative, and the relative's spouse, with whom such child is living, and the needs of any other individual living in the same home if such needs are taken into account in making the determination under section 602(a)(7) of this title) which do not meet the preceding requirements of this subsection, but which would meet such requirements except that such payments are made to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such child or relative, or are made on behalf of such child or relative directly to a person furnishing food, living accommodations, or other goods, services, or items to or for such child, relative, or other individual, but only with respect to a State whose State plan approved under section 602 of this title includes provision for—

[*See main edition for text of* (A) *and* (B)]

(C) periodic review by such State agency of the determination under clause (A) to ascertain whether conditions justifying such determination still exist; with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that the need for such payments is continuing, or is likely to continue, beyond a period specified by the Secretary; and

(D) opportunity for a fair hearing before the State agency on the determination referred to in clause (A) for any individual with respect to whom it is made.

Payments with respect to a dependent child which are intended to enable the recipient to pay for specific goods, services, or items recognized by the State agency as a part of the child's need under the State plan may (in the discretion of the State or local agency administering the plan in the political subdivision) be made, pursuant to a determination referred to in clause (2)(A), in the form of checks drawn jointly to the order of the recipient and the person furnishing such goods, services, or items and negotiable only upon endorsement by both such recipient and such person; and payments so made shall be considered for all of the pur-

poses of this part to be payments described in clause (2). Whenever payments with respect to a dependent child are made in the manner described in clause (2) (including payments described in the preceding sentence), a statement of the specific reasons for making such payments in that manner (on which the determination under clause (2)(A) was based) shall be placed in the file maintained with respect to such child by the State or local agency administering the State plan in the political subdivision. Payments of the type described in clause (2) shall not be subject to the requirements of clauses (A) through (D) of such clause (2), when they are made in the manner described in clause (2) at the request of the family member to whom payment would otherwise be made in an unrestricted manner.

[*See main edition for text of* (c) *to* (f)]

(g) Notwithstanding the provisions of subsection (b) of this section, the term "aid to families with dependent children" does not mean any—

(1) amount paid to meet the needs of an unborn child; or

(2) amount paid (or by which a payment is increased) to meet the needs of a woman occasioned by or resulting from her pregnancy, unless, as has been medically verified, the woman's child is expected to be born in the month such payments are made (or increased) or within the three-month period following such month of payment.

(h) Each dependent child, and each relative with whom such a child is living (including the spouse of such relative as described in subsection (b) of this section), who becomes ineligible for aid to families with dependent children as a result (wholly or partly) of the collection or increased collection of child or spousal support under part D of this subchaptor, and who has received such aid in at least three of the six months immediatoly preceding the month in which such ineligibility begins, shall be deemed to be a recipient of aid to families with dependent children for purposes of subchaptor XIX of this chapter for an additional four calendar months beginning with the month in which such ineligibility begins.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2361(c), title VI, § 2663(c)(3)(A), (B)(i), 98 Stat. 1104, 1166; Aug. 16, 1984, Pub. L. 98-378, § 20(a), 98 Stat. 1322.)

REFERENCES IN TEXT

Part D of this subchapter, referred to in subsec. (h), is classified to section 651 et seq. of this title.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369, § 2663(c)(3)(B)(i), in provisions following subpar. (D) substituted "clauses (A) through (D)" for "clauses (A) through (E)".

Subsec. (b)(2)(D), (E). Pub. L. 98-369, § 2663(c)(3)(A), struck out subpar. (D) which read as follows: "aid in the form of foster home care in behalf of children described in section 608(a) of this title; and", and redesignated subpar. (E) as (D).

Subsec. (g). Pub. L. 98-369, § 2361(c), struck out par. (1) designation, substituted "(1)" and "(2)" for "(A)" and "(B)", respectively, and struck out par. (2) which related to pregnant women.

Subsec. (h). Pub. L. 98-378 temporarily added subsec. (h). See Effective and Termination Dates of 1984 Amendments note below.

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENTS

Section 20(b) of Pub. L. 98-378 provided that: "The amendment made by subsection (a) [enacting subsec. (h) of this section] shall apply only with respect to individuals becoming ineligible for aid to families with dependent children (as described in section 406(h) of the Social Security Act [subsec. (h) of this section] as added by such subsection) on or after the date of the enactment of this Act [Aug. 16, 1984] and before October 1, 1988."

Amendment by section 2361(c) 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 an Effective Date of 1984 Amendment note under section 1396a of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 602, 603, 605, 607, 608, 610, 614, 672, 673, 1396a, 1396d, 1396s of this title.

§ 607. Dependent children of unemployed parents

[*See main edition for text of* (a)]

(b) Requirements of State plan

The provisions of subsection (a) of this section shall be applicable to a State if the State's plan approved under section 602 of this title—

(1) requires the payment of aid to families with dependent children with respect to a dependent child as defined in subsection (a) of this section when—

[*See main edition for text of* (A) *and* (B)]

(C)(i) such parent has 6 or more quarters of work (as defined in subsection (d)(1) of this section) in any 13-calendar-quarter period ending within one year prior to the application for such aid or (ii) such parent received unemployment compensation under an unemployment compensation law of a State or of the United States, or such parent was qualified (within the meaning of subsection (d)(3) of this section) for unemployment compensation under the unemployment compensation law of the State, within one year prior to the application for such aid; and

(2) provides—

(A) for such assurances as will satisfy the Secretary that unemployed parents of dependent children as defined in subsection (a) of this section will be certified to the Secretary of Labor as provided in section 602(a)(19) of this title within 30 days after receipt of aid with respect to such children;

[See main edition for text of (B) to (D); (c) and (d)]

(e) Agreement with States for simplification of procedures

The Secretary and the Secretary of Labor shall jointly enter into an agreement with each State which is able and willing to do so for the purpose of (1) simplifying the procedures to be followed by unemployed parents and other unemployed persons in such State in registering pursuant to section 602(a)(19) of this title for the work incentive program established by part C of this subchapter and in registering with public employment offices (under this section and otherwise) or in connection with applications for unemployment compensation, by reducing the number of locations or agencies where such persons must go in order to register for such programs and in connection with such applications, and (2) providing where possible for a single registration satisfying this section and the requirements of both the work incentive program and the applicable unemployment compensation laws.

(Aug. 14, 1935, ch. 531, title IV, § 407, as added May 8, 1961, Pub. L. 87-31, § 1, 75 Stat. 75, and amended July 25, 1962, Pub. L. 87-543, title I, §§ 104(a)(3)(E), 131(a), 134, 76 Stat. 185, 193, 196; Oct. 13, 1964, Pub. L. 88-641, § 2(b), 78 Stat. 1042; June 29, 1967, Pub. L. 90-36, § 2, 81 Stat. 94; Jan. 2, 1968, Pub. L. 90-248, title II, § 203(a), 81 Stat. 882; June 28, 1968, Pub. L. 90-364, title III, § 302, 82 Stat. 273; Dec. 28, 1971, Pub. L. 92-223, § 3(a)(10), (11), 85 Stat. 805; Oct. 20, 1976, Pub. L. 94-566, title V, § 507(a), (b), (d), 90 Stat. 2688; Aug. 13, 1981, Pub. L. 97-35, title XXIII, §§ 2313(a), (c)(2), 2353(q), 95 Stat. 853, 854, 874; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(c)(4), (j)(3)(B)(ii), 98 Stat. 1166, 1171.)

AMENDMENTS

1984—Subsec. (b)(1)(C). Pub. L. 98-369, § 2663(c)(4)(A), substituted "such parent" for "such father" and "he" wherever appearing.

Subsec. (b)(2)(A). Pub. L. 98-369, § 2663(c)(4)(B), substituted "30 days" for "thirty days".

Subsec. (e). Pub. L. 98-369, § 2663(j)(3)(B)(ii), struck out "of Health, Education, and Welfare" after "The Secretary".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 602, 606, 608, 633, 672, 673, 1315, 1396d of this title.

§ 608. Payment to States for foster home care of dependent children; definitions

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Section 102(b)(1) of Pub. L. 96-272 provided in part that amendment by section 102(b)(1) of Pub. L. 96-272 is effective with respect to expenditures made after Sept. 30, 1979 (but subject to the repeal provided under section 101(a)(2)(A) and (B) of Pub. L. 96-272 [see Repeal of Section note above]).

Amendment of par. (a) of this section and enactment of second paragraph following par. (f) by section 102(b) of Pub. L. 96-272 effective only with respect to expenditures made after Sept. 30, 1979, and before Oct. 1, 1987, see section 102(c) of Pub. L. 96-272, as amended, set out as a note under section 672 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 606, 674, 8624 of this title.

§ 609. Community work experience programs

(a) Establishment and purpose; compensation for work performed; State program

(1) Any State which chooses to do so may establish a community work experience program in accordance with this section. The purpose of the community work experience program is to provide experience and training for individuals not otherwise able to obtain employment, in order to assist them to move into regular employment. Community work experience programs shall be designed to improve the employability of participants through actual work experience and training and to enable individuals employed under community work experience programs to move promptly into regular public or private employment. The facilities of the State public employment offices may be utilized to find employment opportunities for recipients under this program. Community work experience programs shall be limited to projects which serve a useful public purpose in fields such as health, social service, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, and day care. To the extent possible, the prior training, experience, and skills of a recipient shall be utilized in making appropriate work experience assignments. A community work experience program established under this section shall provide—

(A) appropriate standards for health, safety, and other conditions applicable to the performance of work;

(B) that the program does not result in displacement of persons currently employed, or the filling of established unfilled position vacancies;

[See main edition for text of (C) to (E)]

(F) that (i) except as provided in clause (ii) provision will be made for transportation and other costs, not in excess of an amount established by the Secretary, reasonably necessary and directly related to participation in the program, and (ii) to the extent that the State is unable to provide for the costs involved through the furnishing of services directly to the individuals participating in the program, participants who are recipients of aid nnder the State's plan approved under section 602 of this title will instead be reimbursed for transportation costs directly related to their participation in the program (in amounts equal to the cost of transportation by the

most appropriate means as determined by the State agency), and for day care expenses directly attributable to such participation (in amounts determined by the State agency te be reasonable, necessary, and cost-effective but not in excess of the comparable maximum day care deduction allowed under section 602(a)(8)(A)(iii) of this title for recipients of aid under the plan generally); and amounts paid as reimbursement to participants under clause (i) or (ii) shall be considered, for purposes of section 603(a) of this title, to be expenditures made for the proper and efficient administration of the State's plan approved under section 602 of this title.

[*See main edition for text of (2)*]

(3) Nothing in this part or part C of this subchapter, or in any State plan approved under this part, shall be construed to prevent a State from operating (on such terms and conditions and in such cases as the State may find to be necessary or appropriate, whether or not such terms, conditions, and cases are consistent with section 602(a)(19) of this title or part C of this subchapter) a community work experience program in accordance with this section.

(4)(A) Participants in community work experience programs under this section may, subject to subparagraph (B), perform work in the public interest (which otherwise meets the requirements of this section) for a Federal office or agency with its consent, and, notwithstanding section 1342 of title 31 or any other provision of law, such agency may accept such services, but such participants shall not be considered to be Federal employees for any purpose.

(B) The State agency shall provide appropriate workers' compensation and tort claims protection to each participant performing work for a Federal office or agency pursuant to subparagraph (A) on the same basis as such compensation and protection are provided to other participants in community work experience programs in the State.

[*See main edition for text of (b) to (d)*]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2627, 2641(a), 2663(c)(5), 98 Stat. 1136, 1146, 1166.)

AMENDMENTS

1984—Subsec. (a)(1)(B). Pub. L. 98-369, § 2663(c)(5)(A), substituted "vacancies" for "vacanies".

Subsec. (a)(1)(F)(i). Pub. L. 98-369, § 2627(1), inserted "(i) except as provided in clause (ii)" after "that".

Subsec. (a)(1)(F)(ii). Pub. L. 98-369, § 2627(2), added cl. (ii).

Subsec. (a)(3). Pub. L. 98-369, § 2663(c)(5)(B), substituted "part C" for "part (C)" after "section 602(a)(19) of this title or."

Subsec. (a)(4). Pub. L. 98-369, § 2641(a), added par. (4).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2641(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [enacting subsec. (a)(4) of this section] shall become effective on the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2627 of Pub. L. 98-369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98-389, set out as an Effective and Termination Dates of 1984 Amendments note under section 602 of this title.

Amendment by section 2663 of Pub. L. 98-389 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existod (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 603, 614 of this title; title 7 section 2029.

§ 610. Food stamp program coupons

(a) Option to deduct charges from aid

Any State plan for aid and services to needy families with children may (but is not required under this subchapter or any other provision of Federal law to) provide for the institution of procedures, in any or all areas of the State, by the State agency administering or supervising the administration of such plan under which any household participating in the food stamp program established by the Food Stamp Act of 1977, as amended [7 U.S.C. 2011 et seq.], will be entitled, if it so elects, to have the charges, if any, for its coupon allotment under such program deducted from any aid, in the form of money payments, which is (or, except for the deduction of such charge, would be) payable to or with respect to such household (or any member or members thereof) under such plan and have its coupon allotment distributed to it with such aid.

[*See main edition for text of (b)*]

(c) Failure to adopt procedures

Notwithstanding any other provision of law, no agency which is designated as a State agency for any State under or pursuant to the Food Stamp Act of 1977, as amended [7 U.S.C. 2011 et seq.], shall be regarded as having failed to comply with any requirement imposed by or pursuant to such Act solely because of the failure, of the State agency administering or supervising the administration of the State plan (approved under this part) of such State, to institute or carry out a procedure, described in subsection (a) of this section.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(c)(6), 98 Stat. 1166.)

REFERENCES IN TEXT

The Food Stamp Act of 1977, as amended, referred to in subsecs. (a) and (c), is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title noto set out under section 2011 of Title 7 and Tables.

AMENDMENTS

1984—Subsecs. (a), (c). Pub. L. 98-369 substituted "Food Stamp Act of 1977" for "Food Stamp Act of 1964".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, statns, or interpretation which existed (under the provisions of law involved) before

that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 611. Repealed. Pub. L. 98-369, div. B, title VI, § 2651(b)(3), July 18, 1984, 98 Stat. 1149

Section, act Aug. 14, 1935, ch. 531, title IV, § 411, as added Dec. 20, 1977, Pub. L. 95-216, title IV, § 403(a), 91 Stat. 1561, related to availability of wage information to States and political subdivisions. See section 1320b-7 of this title.

EFFECTIVE DATE OF REPEAL

Repeal of section by Pub. L. 98-369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(*l*)(2) of Pub. L. 98-369, set out as an Effective Date note under section 1320b-7 of this title.

§ 614. Work supplementation program

[*See main edition for text of* (*a*)]

(b) Federal funds paid to State to support program; establishment of standards by State; adjustment of aid payable to recipients

[*See main edition for text of* (*1*) *to* (*4*)]

(5) Notwithstanding any other provision of law, a State may make further adjustments in the amounts of aid paid under the plan to different categories of recipients (as determined under paragraph (4)) in order to offset increases in benefits from needs related programs (other than the State plan approved under this part) as the State determines to be necessary and appropriate to further the purposes of the work supplementation program.

(6) Notwithstanding section 602(a)(8) of this title or any other provision of law, a State operating a work supplementation program under this section (A) may reduce or eliminate the amount of earned income to be disregarded under the State plan as the State determines to be necessary and appropriate to further the purposes of the work supplementation program, and (B) during one or more of the first nine months of an individual's employment pursuant to a program under this section, may apply to the wages of the individual the provisions of section 602(a)(8)(A)(iv) of this title without regard to the provisions of (B)(ii)(II) [2] of such section.

(c) Eligible individual; supplemental job; voluntary participation by eligible individual

[*See main edition for text of* (*1*) *and* (*2*)]

(3) For purposes of this section, a supplemented job is—

(A) a job position provided to an eligible individual by the State or local agency administering the State plan under this part; or

(B) a job position provided to an eligible individual by any other employer for which all or part of the wages are paid by such State or local agency.

A State may provide or subsidize any job position under the program as such State determines to be appropriate, but acceptance of any such position shall be voluntary.

[2] So in original. Probably should be "subsection (a)(8)(B)(ii)(II)".

(d) Federal share

The amount of the Federal payment to a State under section 603 of this title for expenditures incurred in making payments to individuals and employers under a work supplementation program shall not exceed an amount equal to the amount which would otherwise be payable under such section if the family of each individual employed in the program established in such State under this section had received the maximum amount of aid payable under the State plan to such a family with no income (without regard to adjustments under subsection (b) of this section) for a period of months equal to the lesser of (1) nine months, or (2) the number of months in which such individual was employed in such program.

[*See main edition for text of* (*e*) *to* (*g*)]

(h) Coordination with other statutory work requirements

No individual receiving a grant under the State plan shall be excused, by reason of the fact that such State has a work supplementation program, from any requirement of this part or part C of this subchapter relating to work requirements (except during any period in which such individual is employed under such work supplementation program).

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2638(a), 2663(c)(7)(A), 98 Stat. 1143, 1166.)

AMENDMENTS

1984—Subsec. (b)(5). Pub. L. 98-369, § 2663(c)(7)(A), substituted "recipients" for "receipients".

Subsec. (b)(6). Pub. L. 98-369, § 2638(a)(1), inserted "(A)" before "may" and added cl. (B).

Subsec. (c)(3)(A). Pub. L. 98-369, § 2638(a)(2)(A), inserted "or" after the semicolon.

Subsec. (c)(3)(B). Pub. L. 98-369, § 2638(a)(2)(B), (C), substituted "any other employer" for "a public or nonprofit entity" and substituted a period for "; or" after "local agency".

Subsec. (c)(3)(C). Pub. L. 98-369, § 2638(a)(2)(D), struck out subpar. (C) which related to a job provided by a proprietary entity involving child day care services for which all or part of the wages are paid by a State or local agency as being a supplemented job.

Subsec. (d). Pub. L. 98-369, § 2638(a)(3), substituted "for expenditures incurred in making payments to individuals and employers under" for "for any quarter for expenditures incurred in operating", and substituted "amount which would otherwise be payable under such section if the family of each individual employed in the program established in such State under this section had received the maximum amount of aid payable under the State plan to such a family with no income (without regard to adjustments under subsection (b) of this section) for a period of months equal to the lesser of (1) nine months, or (2) the number of months in which such individual was employed in such program" for "difference between—(1) the amount which would have been paid under section 603 of this title to such State for such quarter under the State plan if it did not have a work supplementation program in effect and had not altered its State plan accordingly, as such State plan was in effect in May 1981, or as modified thereafter as required by Federal law; and (2) the amount paid to such State under section 603 of this title for such quarter exclusive of the amount so paid for such quarter for the work supplementation program".

Subsec. (h). Pub. L. 98-369, § 2638(a)(4), inserted "(except during any period in which such individual is employed under such work supplementation program)".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2638(c)(1) of Pub. L. 98-369 provided that: "The amendments made by subsection (a) [amending subsecs. (b)(6), (c), (d), and (h) of this section] shall become effective on the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2663 of Pub. L. 98-369 effective July 16, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 603, 1396a, 1396s of this title; title 26 section 51.

§ 615. Attribution of income and resources of sponsor and spouse to alien

[See main edition for text of (a)]

(b) Computation

(1) The amount of income of a sponsor (and his spouse) which shall be deemed to be the unearned income of an alien for any month shall be determined as follows:

[See main edition for text of (A)]

(B) the amount determined under subparagraph (A) shall be reduced by an amount equal to the sum of—

[See main edition for text of (i)]

(ii) the cash needs standard established by the State under its plan for a family of the same size and composition as the sponsor and those other individuals living in the same household as the sponsor who are claimed by him as dependents for purposes of determining his Federal personal income tax liability but whose needs are not taken into account in making a determination under section 602(a)(7) of this title;

[See main edition for text of (iii) and (iv), (2)]

(c) Provision of information by alien concerning his sponsor; receipt of information from Departments of State and Justice

(1) Any individual who is an alien and whose sponsor was a public or private agency shall be ineligible for aid under a State plan approved under this part during the period of three years after his or her entry into the United States, unless the State agency administering such plan determines that such sponsor either no longer exists or has become unable to meet such individual's needs; and such determination shall be made by the State agency based upon such criteria as it may specify in the State plan, and upon such documentary evidence as it may therein require. Any such individual, and any other individual who is an alien (as a condition of his or her eligibility for aid under a State plan approved under this part during the period of three years after his or her entry into the United States), shall be required to provide to the State agency administering such plan such information and documentation with respect to his sponsor as may be necessary in order for the State agency to make any determination required under this section, and to obtain any cooperation from such sponsor necessary for any such determination. Such alien shall also be required to provide to the State agency such information and documentation as it may request and which such alien or his sponsor provided in support of such alien's immigration application.

[See main edition for text of (2); (d) to (f)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2635, 2663(c)(7)(B), 98 Stat. 1142, 1166.)

AMENDMENTS

1984—Subsec. (b)(1)(B)(ii). Pub. L. 98-369, § 2663(c)(7)(B), substituted "determining" for "determinig".

Subsec. (c)(1). Pub. L. 98-369, § 2635, substituted "Any individual who is an alien and whose sponsor was a public or private agency shall be ineligible for aid under a State plan approved under this part during the period of three years after his or her entry into the United States, unless the State agency administering such plan determines that such sponsor either no longer exists or has become unable to meet such individual's needs; and such determination shall be made by the State agency based upon such criteria as it may specify in the State plan, and upon such documentary evidence as it may therein require. Any such individual, and any other individual who is an alien (as a condition of his or her eligibility for aid under a State plan approved under this part during the period of three years after his or her entry into the United States), shall be required to provide" for "Any individual who is an alien shall, during the period of three years after entry into the United States, in order to be eligible for aid under a State plan approved under this part, be required to provide".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2635 of Pub. L. 98-369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98-369, set out as an Effective and Termination Dates of 1964 Amendments note under section 602 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

PART B—CHILD WELFARE SERVICES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 300z-5, 602, 671, 672, 674, 675, 676 of this title; title 8 sections 1255a, 1522; title 25 section 1931; title 40 App. section 202.

§ 620. Authorization of appropriations

[See main edition for text of (a)]

(b) Funds appropriated for any fiscal year pursuant to the authorization contained in subsection (a) of this section shall be included in the appropriation Act (or supplemental appropriation Act) for the fiscal year preceding the fiscal year for which such funds are available for obligation. In order to effect a transition to

this method of timing appropriation action the preceding sentence shall apply notwithstanding the fact that its initial application will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding fiscal year.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(c)(8), 98 Stat. 1166.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369 struck out the comma after "preceding sentence".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

PART C—WORK INCENTIVE PROGRAM FOR RECIPIENTS OF AID UNDER STATE PLAN APPROVED UNDER PART A

§ 631. Authorization of appropriations

(a) Transfer of moneys

There is hereby authorized to be appropriated to the Secretary of Health and Human Services for each fiscal year a sum sufficient to carry out the purposes of this part. The Secretary of Health and Human Services shall transfer to the Secretary of Labor from time to time sufficient amounts, out of the moneys appropriated pursuant to this section, to enable him to carry out such purposes.

[*See main edition for text of (b) and (c)*]

(Aug. 14, 1935, ch. 531, title IV, § 431, as added Jan. 2, 1968, Pub. L. 90-248, title II, § 204(a), 81 Stat. 884, and amended Dec. 28, 1971, Pub. L. 92-223, § 3(b)(2), 85 Stat. 805; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(j)(2)(B)(ii), 98 Stat. 1170.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369 substituted "Health and Human Services" for "Health, Education, and Welfare" in two places.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 632. Establishment of programs

[*See main edition for text of (a) to (c)*]

(d) Use of authorities for providing training and employment services and opportunities; referrals under job training partnership provisions; use of funds; reimbursement of agencies for services

In providing the training and employment services and opportunities required by this part, the Secretary shall, to the maximum extent feasible, assure that such services and opportunities are provided by using all authority available under this chapter or any other Act. In order to assure that the services and opportunities so required are provided, the Secretary (1) shall assure, when appropriate, that registrants under this part are referred for training and employment services under the Job Training Partnership Act [29 U.S.C. 1501 et seq.], and (2) may use the funds appropriated under this part to provide programs required by this part through such other Acts to the same extent and under the same conditions (except as regards the Federal matching percentage) as if appropriated under such other Act and, in making use of the programs of other Federal, State, or local agencies (public or private), the Secretary may reimburse such agencies for services rendered to individuals under this part to the extent such services and opportunities are not otherwise available on a nonreimbursable basis.

[*See main edition for text of (e)*]

(f) Private industry council for service delivery area; functions; institutional training

(1) The Secretary shall utilize the services of each private industry council (as established under the Job Training Partnership Act [29 U.S.C. 1501 et seq.]) to identify and provide advice on the types of jobs available or likely to become available in the service delivery area of such council.

[*See main edition for text of (2)*]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(k), 98 Stat. 1171.)

AMENDMENTS

1984—Subsecs. (d), (f)(1). Pub. L. 98-369 struck out "of Labor" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 602, 603, 607, 631, 633, 634, 636, 642 of this title; title 26 section 51.

§ 633. Operation of program

[*See main edition for text of (a) to (f)*]

(g) Refusal of employment

Where an individual, certified to the Secretary pursuant to section 602(a)(19)(G) of this title refuses without good cause to accept employment or participate in a project under a program established by this part, the Secretary shall (after providing opportunity for fair hearing) notify the State agency which certified such individual and submit such other information as he may have with respect to such refusal.

[*See main edition for text of (h) and (i)*]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(k), 98 Stat. 1171.)

AMENDMENTS

1984—Subsec. (g). Pub. L. 98-369 struck out "of Labor" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 634. Incentive payments and allowances for transportation and other costs

[*See main edition for text of (a)*]

(b) The Secretary is also authorized to pay, to any member of a family participating in manpower training under this part, allowances for transportation and other costs incurred by such member, to the extent such costs are necessary to and directly related to the participation by such member in such training.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(k), 98 Stat. 1171.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369 struck out "of Labor" after "Secretary".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 636. Period of enrollment

[*See main edition for text of (a)*]

(b) Services provided under this part may continue to be provided to an individual for such period as the Secretary determines (in accordance with regulations prescribed jointly by him and the Secretary of Health and Human Services) is necessary to qualify him fully for employment even though his earnings disqualify him from aid under a State plan approved under section 602 of this title.

(Aug. 14, 1935, ch. 531, title IV, § 436, as added Jan. 2, 1968, Pub. L. 90-248, title II, § 204(a), 81 Stat. 887, and amended Dec. 28, 1971, Pub. L. 92-223, § 3(b)(6), 85 Stat. 808; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(j)(2)(B)(iii), 98 Stat. 1170.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369 substituted "Health and Human Services" for "Health, Education, and Welfare".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 639. Rules and regulations

The Secretary and the Secretary of Health and Human Services shall, not later than July 1, 1972, issue regulations to carry out the purposes of this part. Such regulations shall provide for the establishment, jointly by the Secretary and the Secretary of Health and Human Services, of (1) a national coordination committee the duty of which shall be to establish uniform reporting and similar requirements for the administration of this part, and (2) a regional coordination committee for each region which shall be responsible for review and approval of statewide operational plans developed pursuant to section 633(b) of this title.

(Aug. 14, 1935, ch. 531, title IV, § 439, as added Jan. 2, 1968, Pub. L. 90-248, title II, § 204(a), 81 Stat. 888, and amended Dec. 28, 1971, Pub. L. 92-223, § 3(b)(8), 85 Stat. 808; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(j)(2)(B)(iv), 98 Stat. 1170.)

AMENDMENTS

1984—Pub. L. 98-369 substituted "Health and Human Services" for "Health, Education, and Welfare" wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 641. Evaluation and research

The Secretary shall (jointly with the Secretary of Health and Human Services) provide for the continuing evaluation of the work incentive programs established by this part, including their effectiveness in achieving stated goals and their impact on other related programs. He also may conduct research regarding ways to increase the effectiveness of such programs. He may, for this purpose, contract for independent evaluations of and research regarding such programs or individual projects under such programs. For purposes of sections 635 and 643 of this title, the costs of carrying out this section shall not be regarded as costs of carrying out work incentive programs established by this part. Nothing in this section shall be construed as authorizing the Secretary to enter into any contract with any organization after June 1, 1970, for the dissemination by such organization of information about programs authorized to be carried on under this part.

(Aug. 14, 1935, ch. 531, title IV, § 441, as added Jan. 2, 1968, Pub. L. 90-248, title II, § 204(a), 81 Stat. 888, and amended Dec. 28, 1971, Pub. L. 92-223, § 3(b)(9), 85 Stat. 808; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(c)(9), (j)(2)(B)(v), 98 Stat. 1166, 1170.)

AMENDMENTS

1984—Pub. L. 98-369, § 2663(c)(9), struck out subsec. (a) designation.

Pub. L. 98-369, § 2663(j)(2)(B)(v), substituted "Health and Human Services" for "Health, Education, and Welfare".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 643. Collection of State share

If a non-Federal contribution of 10 per centum of the costs of the work incentive programs established by this part is not made in any State (as specified in section 602(a) of this title), the Secretary of Health and Human Services may withhold any action under section 604 of this title because of the State's failure to comply substantially with a provision required by section 602 of this title. If the Secretary of Health and Human Services does withhold such action, he shall, after reasonable notice and opportunity for hearing to the appropriate State agency or agencies, withhold any payments to be made to the State under sections 303(a), 603(a), 1203(a), 1353(a), 1383(a), and 1396b(a) of this title until the amount so withheld (including any amounts contributed by the State pursuant to the requirement in section 602(a)(19)(C) of this title) equals 10 per centum of the costs of such work incentive programs. Such withholding shall remain in effect until such time as the Secretary has assurances from the State that such 10 per centum will be contributed as required by section 602 of this title. Amounts so withheld shall be deemed to have been paid to the State under such sections and shall be paid by the Secretary of Health and Human Services to the Secretary. Such payment shall be considered a non-Federal contribution for purposes of section 635 of this title.

(Aug. 14, 1935, ch. 531, title IV, § 443, as added Jan. 2, 1968, Pub. L. 90-248, title II, § 204(a), 81 Stat. 888, and amended Dec. 28, 1971, Pub. L. 92-223, § 3(b)(11), 85 Stat. 808; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(j)(2)(B)(vi), 98 Stat. 1170.)

AMENDMENTS

1984—Pub. L. 98-369 substituted "Health and Human Services" for "Health, Education, and Welfare" wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 644. Agreements with other agencies providing assistance to families of unemployed parents

(a) Authorization to enter into agreements

The Secretary is authorized to enter into an agreement (in accordance with the succeeding provisions of this section) with any qualified State agency (as described in subsection (b) of this section) under which the program established by the preceding sections of this part C will (except as otherwise provided in this section) be applicable to individuals certified by such State agency in the same manner, to the same extent, and under the same conditions as such program is applicable with respect to individuals certified to the Secretary by a State agency administering or supervising the administration of a State plan approved by the Secretary of Health and Human Services under part A of this subchapter.

[*See main edition for text of* (b) *and* (c)]

(d) Public service employment lists

The Secretary shall, at the request of any qualified State agency referred to in subsection (a) of this section and upon receipt from it of a list of the names of individuals referred to the Secretary, furnish to such agency the names of each individual on such list participating in public service employment under section 633(a)(3) of this title whom the Secretary determines should continue to participate in such employment. The Secretary shall not comply with any such request with respect to an individual on such list unless such individual has been certified to the Secretary by such agency under section 602(a)(19)(G) of this title for a period of at least six months.

(Aug. 14, 1935, ch. 531, title IV, § 444, as added Jan. 2, 1968, Pub. L. 90-248, title II, § 204(a), 81 Stat. 889, and amended Dec. 28, 1971, Pub. L. 92-223, § 3(b)(12), 85 Stat. 808; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(c)(10), (j)(2)(B)(vii), 98 Stat. 1166, 1170.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 2663(j)(2)(B)(vii), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (d). Pub. L. 98-369, § 2663(c)(10), substituted "referred" for "rereferred" after "names of individuals".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 645. Work incentive demonstration program

[*See main edition for text of* (a)]

(b) Application; contents of State program plan; approval

(1) Not later than June 30, 1987, the Governor of a State which desires to operate a work incentive demonstration program under this section shall submit to the Secretary of Health and Human Services a letter of application stating such intent. Accompanying the letter of application shall be a State program plan which must—

[*See main edition for text of* (A) *to* (D)]

(E) describe the techniques to be used to achieve the objectives of the work incentive demonstration program, which may include but shall not be limited to: maximum periods of participation, job training, job find clubs, grant diversion to either public or private sector employers, services contracts with

State employment services, service delivery areas under the Job Training Partnership Act [29 U.S.C. 1501 et seq.], or private placement agencies, targeted jobs tax credit outreach campaigns, and performance-based placement incentives; and

[*See main edition for text of (F), (2) and (3); (c)*]

(d) Term of program; discretionary planning period

A State's work incentive demonstration program, if initially approved, shall be in force for a three-year period, except that in the case of a State which has submitted a letter of application on or before June 30, 1987, such program may continue in force until June 30, 1988. During this period, the State may elect to use up to six months for planning purposes. During such planning period, all requirements of part A of this subchapter and this part C shall remain in full force and effect.

(e) Evaluations

The Secretary of Health and Human Services shall conduct two evaluations of a State's work incentive demonstration program. The first evaluation shall be conducted at the conclusion of the first twelve months of operation of the demonstration program. The second evaluation shall be conducted three years from the date of the Secretary's approval of the demonstration program. Both evaluations shall compare placement rates during the demonstration program with placement rates achieved during a number of previous years, to be determined by the Secretary of Health and Human Services.

(f) State funds for administration and operation of program; study of allocation formula; report to Congress

[*See main edition for text of (1) and (2)*]

(3) The Secretary of Health and Human Services shall conduct, in consultation with the States, a thorough study of the allocation formula described in paragraph (1) of this subsection and report to Congress no later than April 1, 1985, on the findings of this study with recommendations, if appropriate, for modifying the allocation formula to take into account State performance and to provide for the equitable distribution of funds.

[*See main edition for text of (g)*]

(Aug. 14, 1935, ch. 531, title IV, § 445, as added Aug. 13, 1981, Pub. L. 97-35, title XXIII, § 2309, 95 Stat. 850, and amended Sept. 3, 1982, Pub. L. 97-248, title I, § 158(a), (b), 96 Stat. 399; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(c)(11), 98 Stat. 1166; Aug. 22, 1984, Pub. L. 98-396, title I, § 101, 98 Stat. 1392, 1393; Oct. 18, 1986, Pub. L. 99-500, § 150, 100 Stat. 1783-352, and Oct. 30, 1986, Pub. L. 99-591, § 150, 100 Stat. 3341-355.)

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

AMENDMENTS

1986—Pub. L. 99-500 and Pub. L. 99-591 [illegible] ited "June 30, 1987" for "June 30, 1985" in [illegible] o)(1) and "June 30, 1987" for "June 30, 1984" and "June 30, 1988" for "June 30, 1987" in subsec. (d).

1984—Subsec. (b)(1). Pub. L. 98-396 substituted "June 30, 1985" for "June 30, 1984".

Subsec. (b)(1)(E). Pub. L. 98-396 which directed the substitution of "service delivery areas under the Job Training Partnership Act," for "prime sponsors under the Comprehensive Employment and Training Act of 1973," was executed by substituting "service delivery areas" for "prime sponsors" as the probable intent of Congress in view of the intervening substitution of "Job Training Partnership Act" for "Comprehensive Employment and Training Act of 1973" by Pub. L. 98-369.

Pub. L. 98-369 substituted "Job Training Partnership Act" for "Comprehensive Employment and Training Act of 1973".

Subsec. (d). Pub. L. 98-396 inserted provision that in the case of a State which has submitted a letter of application on or before June 30, 1984, such program may continue in force until June 30, 1987.

Subsec. (e). Pub. L. 98-396 substituted provision that the second evaluation shall be conducted three years from the date of the Secretary's approval of the demonstration program for provision that the second evaluation had to be conducted at the conclusion of the demonstration program.

Subsec. (f)(3). Pub. L. 98-396 added par. (3).

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 101 of Pub. L. 98-396 provided in part that: "These provisions [amending this section] shall become effective on the date of the enactment of this Act [Aug. 22, 1984]."

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

PART D—CHILD SUPPORT AND ESTABLISHMENT OF PATERNITY

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 405, 503, 602, 603, 603a, 606, 671, 1306, 1315, 1320b-7, 1396a of this title; title 8 section 1255a; title 26 section 6103; title 29 section 49b.

§ 651. Authorization of appropriations

For the purpose of enforcing the support obligations owed by absent parents to their children and the spouse (or former spouse) with whom such children are living, locating absent parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for aid under part A of this subchapter) for whom such assistance is requested, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part.

(As amended Aug. 16, 1984, Pub. L. 98-378, § 2, 98 Stat. 1305.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in text, is classified to section 601 et seq. of this title.

AMENDMENTS

1984—Pub. L. 98-378 substituted "obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to

all children (whether or not eligible for aid under part A of this subchapter) for whom such assistance is requested," for "and obtaining child and spousal support,".

SHORT TITLE

This part is popularly known as the "Child Support Enforcement Act".

§ 652. Duties of Secretary

(a) Establishment of separate organizational unit; duties

The Secretary shall establish, within the Department of Health and Human Services a separate organizational unit, under the direction of a designee of the Secretary, who shall report directly to the Secretary and who shall—

[*See main edition for text of (1) to (3)*]

(4) evaluate the implementation of State programs established pursuant to such plan, conduct such audits of State programs established under the plan approved under this part as may be necessary to assure their conformity with the requirements of this part, and, not less often than once every three years (or not less often than annually in the case of any State to which a reduction is being applied under section 603(h)(1) of this title, or which is operating under a corrective action plan in accordance with section 603(h)(2) of this title), conduct a complete audit of the programs established under such plan in each State and determine for the purposes of the penalty provision of section 603(h) of this title whether the actual operation of such programs in each State conforms to the requirements of this part;

[*See main edition for text of (5) to (9)*]

(10) not later than three months after the end of each fiscal year, beginning with the year 1977, submit to the Congress a full and complete report on all activities undertaken pursuant to the provisions of this part, which report shall include, but not be limited to, the following:

[*See main edition for text of (A) and (B)*]

(C) the following data, with the data required under each clause being separately stated for cases where the child is receiving aid to families with dependent children (or foster care maintenance payments under part E of this subchapter), cases where the child was formerly receiving such aid or payments and the State is continuing to collect support assigned to it under section 602(a)(26) or 671(a)(17) of this title, and all other cases under this part:

(i) the total number of cases in which a support obligation has been established in the fiscal year for which the report is submitted, and the total amount of such obligations;

(ii) the total number of cases in which a support obligation has been established, and the total amount of such obligations;

(iii) the number of cases described in clause (i) in which support was collected during such fiscal year, and the total amount of such collections;

(iv) the number of cases described in clause (ii) in which support was collected during such fiscal year, and the total amount of such collections; and

(v) the number of child support cases filed in each State in such fiscal year, and the amount of the collections made in each State in such fiscal year, on behalf of children residing in another State or against parents residing in another State;

[*See main edition for text of (D) to (F)*]

(G) data, by State, on the use of Federal courts and on use of the Internal Revenue Service for collections, the number of court orders on which collections were made, the number of paternity determinations made and the number of parents located, in sufficient detail to show the cost and benefits to the States and to the Federal Government;

(H) the major problems encountered which have delayed or prevented implementation of the provisions of this part during the fiscal year last ending prior to the submission of such report; and

(I) the amount of administrative costs which are expended in each functional category of expenditures, including establishment of paternity.

The information contained in any such report under subparagraph (A) shall specifically include (i) the total amount of child support payments collected as a result of services furnished during the fiscal year involved to individuals under section 654(6) of this title, (ii) the cost to the States and to the Federal Government of furnishing such services to those individuals, and (iii) the extent to which the furnishing of such services was successful in providing sufficient support to those individuals to assure that they did not require assistance under the State plan approved under part A of this subchapter.

(b) Certification of child support obligations to Secretary of Treasury for collection

The Secretary shall, upon the request of any State having in effect a State plan approved under this part, certify to the Secretary of the Treasury for collection pursuant to the provisions of section 6305 of the Internal Revenue Code of 1986 the amount of any child support obligation (including any support obligation with respect to the parent who is living with the child and receiving aid under the State plan approved under part A of this subchapter) which is assigned to such State or is undertaken to be collected by such State pursuant to section 654(6) of this title. No amount may be certified for collection under this subsection except the amount of the delinquency under a court or administrative order for support and upon a showing by the State that such State has made diligent and reasonable efforts to collect such amounts utilizing its own collection mechanisms, and upon an agreement that the State will reimburse the Secretary of the Treasury for any costs involved in making the collec-

tion. All reimbursements shall be credited to the appropriation accounts which bore all or part of the costs involved in making the collections. The Secretary after consultation with the Secretary of the Treasury may, by regulation, establish criteria for accepting amounts for collection and for making certification under this subsection including imposing such limitations on the frequency of making such certifications under this subsection.

(c) Revolving fund; appropriations

(1) There is hereby established in the Treasury a revolving fund which shall be available to the Secretary without fiscal year limitation, to enable him to pay to the States for distribution in accordance with the provisions of section 657 of this title such amounts as may be collected and paid (subject to paragraph (2)) into such fund under section 6305 of the Internal Revenue Code of 1986.

(2) There is hereby appropriated to the fund, out of any moneys in the Treasury not otherwise appropriated, amounts equal to the amounts collected under section 6305 the Internal Revenue Code of 1986, reduced by the amounts credited or refunded as overpayments of the amounts so collected. The amounts appropriated by the preceding sentence shall be transferred at least quarterly from the general fund of the Treasury to the fund on the basis of estimates made by the Secretary of the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(d) Child support management information system

(1) The Secretary shall not approve the initial and annually updated advance automatic data processing planning document, referred to in section 654(16) of this title, unless he finds that such document, when implemented, will generally carry out the objectives of the management system referred to in such subsection, and such document—

[*See main edition for text of* (*A*)]

(B) contains a description of the proposed management system referred to in section 655(a)(1)(B) of this title, including a description of information flows, input data, and output reports and uses,

[*See main edition for text of* (*C*) *to* (*G*)]

(2)(A) The Secretary shall through the separate organizational unit established pursuant to subsection (a) of this section, on a continuing basis, review, assess, and inspect the planning, design, and operation of, management information systems referred to in section 655(a)(1)(B) of this title, with a view to determining whether, and to what extent, such systems meet and continue to meet requirements imposed under paragraph (1) and the conditions specified under section 654(16) of this title.

(B) If the Secretary finds with respect to any statewide management information system referred to in section 655(a)(1)(B) of this title that there is a failure substantially to comply with criteria, requirements, and other undertakings, prescribed by the advance automatic data processing planning document theretofore approved by the Secretary with respect to such system, then the Secretary shall suspend his approval of such document until there is no longer any such failure of such system to comply with such criteria, requirements, and other undertakings so prescribed.

(e) Technical assistance to States

The Secretary shall provide such technical assistance to States as he determines necessary to assist States to plan, design, develop, or install and provide for the security of, the management information systems referred to in section 655(a)(1)(B) of this title.

(f) Regulations

The Secretary shall issue regulations to require that State agencies administering the child support enforcement program under this part petition for the inclusion of medical support as part of any child support order whenever health care coverage is available to the absent parent at a reasonable cost. Such regulation shall also provide for improved information exchange between such State agencies and the State agencies administering the State medicaid programs under subchapter XIX of this chapter with respect to the availability of health insurance coverage.

(Aug. 14, 1935, ch. 531, title IV, § 452, as added Jan. 4, 1975, Pub. L. 93-647, § 101(a), 88 Stat. 2351, and amended; May 23, 1977, Pub. L. 95-30, title V, § 504(a), 91 Stat. 163; June 9, 1980, Pub. L. 96-265, title IV, §§ 402(a), 405(c), (d), 94 Stat. 462, 464, 465; June 17, 1980, Pub. L. 96-272, title III, § 301(b), 94 Stat. 527; Aug. 13, 1981, Pub. L. 97-35, title XXIII, § 2332(b), 95 Stat. 861; Sept. 3, 1982, Pub. L. 97-248, title I, § 175(a)(1), 96 Stat. 403; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(c)(12), (j)(2)(B)(viii), 98 Stat. 1166, 1170; Aug. 16, 1984, Pub. L. 98-378, §§ 4(b), 9(a)(1), 13, 16, 98 Stat. 1312, 1316, 1319, 1321; Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (b) and (c), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1986—Subsecs. (b), (c). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" wherever appearing.

1984—Subsec. (a). Pub. L. 98-369, § 2663(j)(2)(B)(viii), substituted "Health and Human Services" for "Health, Education, and Welfare" in provisions preceding par. (1).

Subsec. (a)(4). Pub. L. 98-378, § 9(a)(1), substituted "not less often than once every three years (or not less often than annually in the case of any State to which a reduction is being applied under section 603(h)(1) of this title, or which is operating under a corrective action plan in accordance with section 803(h)(2) of this title)" for "not less often than annually".

Subsec. (a)(10)(C). Pub. L. 98-378, § 13(a), amended subpar. (C) generally to include the reporting of additional aspects of child support enforcement. Prior to amendment, subpar. (C) read as follows: "the number of child support cases (with separate identification of the number in which collection of spousal support was

involved) in each State during each quarter of the fiscal year last ending before the report is submitted and during each quarter of the preceding fiscal year (including the transitional period beginning July 1, 1976, and ending September 30, 1976, in the case of the first report to which this subparagraph applies), and the disposition of such cases;".

Subsec. (a)(10)(I). Pub. L. 98-378, § 13(b), added subpar. (I).

Subsec. (c)(2). Pub. L. 98-369, § 2663(c)(12), substituted "preceding sentence" for "preceding section".

Subsecs. (d)(1)(B), (2)(A), (B), (e). Pub. L. 98-378, § 4(b), substituted "655(a)(1)(B) of this title" for "655(a)(3) of this title".

Subsec. (f). Pub. L. 98-378, § 16, added subsec. (f).

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 4(c) of Pub. L. 98-378 provided that: "The amendments made by this section [amending sections 652 and 655 of this title] shall apply to fiscal years after fiscal year 1983."

Amendment by section 9(a)(1) of Pub. L. 98-378 effective Oct. 1, 1983, see section 9(c) of Pub. L. 98-378, set out as an Effective and Termination Dates of 1984 Amendments note under section 602 of this title.

Section 13(c) of Pub. L. 98-378 provided that: "The amendments made by this section [amending this section] shall be effective for reports for fiscal year 1986 and each fiscal year thereafter."

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 603, 653, 654, 660 of this title; title 26 section 6305.

§ 653. Parent Locator Service

[*See main edition for text of* (a)]

(b) Disclosure of information to authorized persons

Upon request, filed in accordance with subsection (d) of this section of any authorized person (as defined in subsection (c) of this section) for the social security account number (or numbers, if the individual involved has more than one such number) and the most recent address and place of employment of any absent parent, the Secretary shall, notwithstanding any other provision of law, provide through the Parent Locator Service such information to such person, if such information—

(1) is contained in any files or records maintained by the Secretary or by the Department of Health and Human Services; or

(2) is not contained in such files or records, but can be obtained by the Secretary, under the authority conferred by subsection (e) of this section, from any other department, agency, or instrumentality of the United States or of any State.

No information shall be disclosed to any person if the disclosure of such information would contravene the national policy or security interests of the United States or the confidentiality of census data. The Secretary shall give priority to requests made by any authorized person described in subsection (c)(1) of this section.

[*See main edition for text of* (c) *to* (e)]

(f) Arrangements and cooperation with State agencies

The Secretary, in carrying out his duties and functions under this section, shall enter into arrangements with State agencies administering State plans approved under this part for such State agencies to accept from resident parents, legal guardians, or agents of a child described in subsection (c)(3) of this section and to transmit to the Secretary requests for information with regard to the whereabouts of absent parents and otherwise to cooperate with the Secretary in carrying out the purposes of this section.

(Aug. 14, 1935, ch. 531, title IV, § 453, as added Jan. 4, 1975, Pub. L. 93-647, § 101(a), 88 Stat. 2353, and amended Aug. 13, 1981, Pub. L. 97-35, title XXIII, § 2332(c), 95 Stat. 862; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(c)(13), (j)(2)(B)(ix), 98 Stat. 1166, 1170; Aug. 16, 1984, Pub. L. 98-378, §§ 17, 19(a), 98 Stat. 1321, 1322.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-378, § 19(a), inserted "the social security account number (or numbers, if the individual involved has more than one such number) and".

Subsec. (b)(1). Pub. L. 98-369, § 2663(j)(2)(B)(ix), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (b)(2). Pub. L. 98-369, § 2663(c)(13), substituted "of the United States" for ", or the United States".

Subsec. (f). Pub. L. 98-378, § 17, struck out ", after determining that the absent parent cannot be located through the procedures under the control of such State agencies," before "to transmit to the Secretary".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 654. State plan for child and spousal support

A State plan for child and spousal support must—

[*See main edition for text of* (1) *to* (3)]

(4) provide that such State will undertake—

[*See main edition for text of* (A)]

(B) in the case of any child with respect to whom such assignment is effective, including an assignment with respect to a child on whose behalf a State agency is making foster care maintenance payments under part E of this subchapter, to secure support for such child from his parent (or from any other person legally liable for such support), and from such parent for his spouse (or former spouse) receiving aid to families with dependent children (but only if a support obligation has been established with respect to such spouse, and only if the support obligation established with respect to the child is being enforced under the plan), utilizing any reciprocal arrangements adopted with other States (unless the

agency administering the plan of the State under part A or E of this subchapter determines in accordance with the standards prescribed by the Secretary pursuant to section 602(a)(26)(B) of this title that it is against the best interests of the child to do so), except that when such arrangements and other means have proven ineffective, the State may utilize the Federal courts to obtain or enforce court orders for support;

(5) provide that, in any case in which support payments are collected for an individual with respect to whom an assignment under section 602(a)(26) of this title is effective, such payments shall be made to the State for distribution pursuant to section 657 of this title and shall not be paid directly to the family, and the individual will be notified at least annually of the amount of the support payments collected;[1] except that this paragraph shall not apply to such payments (except as provided in section 657(c) of this title) for any month following the first month in which the amount collected is sufficient to make such family ineligible for assistance under the State plan approved under part A of this subchapter;

(6) provide that (A) the child support collection or paternity determination services established under the plan shall be made available to any individual not otherwise eligible for such services upon application filed by such individual with the State, including support collection services for the spouse (or former spouse) with whom the absent parent's child is living (but only if a support obligation has been established with respect to such spouse, and only if the support obligation established with respect to the child is being enforced under the plan), (B) an application fee for furnishing such services shall be imposed, which shall be paid by the individual applying for such services, or recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and shall be considered income to the program), the amount of which (i) will not exceed $25 (or such higher or lower amount (which shall be uniform for all States) as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in administrative costs), and (ii) may vary among such individuals on the basis of ability to pay (as determined by the State), (C) a fee of not more than $25 may be imposed in any case where the State requests the Secretary of the Treasury to withhold past-due support owed to or on behalf of such individual from a tax refund pursuant to section 664(a)(2) of this title, and (D) any costs in excess of the fees so imposed may be collected—

[*See main edition for text of (i) and (ii), (7)*]

(8) provide that the agency administering the plan will establish a service to locate absent parents utilizing—

(A) all sources of information and available records, and

(B) the Parent Locator Service in the Department of Health and Human Services;

(9) provide that the State will, in accordance with standards prescribed by the Secretary, cooperate with any other State—

[*See main edition for text of (A) and (B)*]

(C) in securing compliance by an absent parent residing in such State (whether or not permanently) with an order issued by a court of competent jurisdiction against such parent for the support and maintenance of the child or children or the parent of such child or children with respect to whom aid is being provided under the plan of such other State, and

[*See main edition for text of (D), (10) to (15)*]

(16) provide, at the option of the State, for the establishment, in accordance with an (initial and annually updated) advance automatic data processing planning document approved under section 652(d) of this title, of an automatic data processing and information retrieval system designed effectively and efficiently to assist management in the administration of the State plan, in the State and localities thereof, so as (A) to control, account for, and monitor (i) all the factors in the support enforcement collection and paternity determination process under such plan (including, but not limited to, (I) identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses and mailing addresses (including postal ZIP codes) of any individual with respect to whom support obligations are sought to be established or enforced and with respect to any person to whom such support obligations are owing) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether such individual is paying or is obligated to pay support in more than one jurisdiction, (II) checking of records of such individuals on a periodic basis with Federal, intra- and inter-State, and local agencies, (III) maintaining the data necessary to meet the Federal reporting requirements on a timely basis, and (IV) delinquency and enforcement activities), (ii) the collection and distribution of support payments (both intra- and inter-State), the determination, collection, and distribution of incentive payments both inter- and intra-State, and the maintenance of accounts receivable on all amounts owed, collected and distributed, and (iii) the costs of all services rendered, either directly or by interfacing with State financial management and expenditure information, (B) to provide interface with records of the State's aid to families with dependent children program in order to determine if a collection of a support payment causes a change affecting eligibility for or the amount of aid under such program, (C) to provide for security against unauthorized access to, or use of, the data in such system, (D) to facili-

[1] So in original. The semicolon probably should be a comma.

tate the development and improvement of the income withholding and other procedures required under section 666(a) of this title through the monitoring of support payments, the maintenance of accurate records regarding the payment of support, and the prompt provision of notice to appropriate officials with respect to any arrearages in support payments which may occur, and (E) to provide management information on all cases under the State plan from initial referral or application through collection and enforcement;

(17) in the case of a State which has in effect an agreement with the Secretary entered into pursuant to section 663 of this title for the use of the Parent Locator Service established under section 653 of this title, provide that the State will accept and transmit to the Secretary requests for information authorized under the provisions of the agreement to he furnished by such Service to authorized persons, will impose and collect (in accordance with regulations of the Secretary) a fee sufficient to cover the costs to the State and to the Secretary incurred by reason of such requests, will transmit to the Secretary from time to time (in accordance with such regulations) so much of the fees collected as are attributable to such costs to the Secretary so incurred, and during the period that such agreement is in effect will otherwise comply with such agreement and regulations of the Secretary with respect thereto;

(18) provide that the State has in effect procedures necessary to obtain payment of past-due support from overpayments made to the Secretary of the Treasury as set forth in section 664 of this title, and take all steps necessary to implement and utilize such procedures;

(19) provide that the agency administering the plan—

[*See main edition for text of (A)*]

(B) shall enforce any such child support obligations which are owed by such an individual but are not being met—

[*See main edition for text of (i)*]

(ii) in the absence of such an agreement, by bringing legal process (as defined in section 662(e) of this title) to require the withholding of amounts from such compensation;

(20) provide, to the extent required by section 666 of this title, that the State (A) shall have in effect all of the laws to improve child support enforcement effectiveness which are referred to in that section, and (B) shall implement the procedures which are prescribed in or pursuant to such laws;

(21)(A) at the option of the State, impose a late payment fee on all overdue support (as defined in section 666(e) of this title) under any obligation being enforced under this part, in an amount equal to a uniform percentage determined by the State (not less than 3 percent nor more than 6 percent) of the overdue support, which shall be payable by the absent parent owing the overdue support; and

(B) assure that the fee will be collected in addition to, and only after full payment of, the overdue support, and that the imposition of the late payment fee shall not directly or indirectly result in a decrease in the amount of the support which is paid to the child (or spouse) to whom, or on whose behalf, it is owed;

(22) in order for the State to be eligible to receive any incentive payments under section 658 of this title, provide that, if one or more political subdivisions of the State participate in the costs of carrying out activities under the State plan during any period, each such subdivision shall be entitled to receive an appropriate share (as determined by the State) of any such incentive payments made to the State for such period, taking into account the efficiency and effectiveness of the activities carried out under the State plan by such political subdivision; and

(23) provide that the State will regularly and frequently publicize, through public service announcements, the availability of child support enforcement services under the plan and otherwise, including information as to any application fees for such services and a telephone number or postal address at which further information may be obtained.

The State may allow the jurisdiction which makes the collection involved to retain any application fee under paragraph (6)(B) or any late payment fee under paragraph (21).

(Aug. 14, 1935, ch. 531, title IV, § 454, as added Jan. 4, 1975, Pub. L. 93-647, § 101(a), 88 Stat. 2354, and amended Aug. 9, 1975, Pub. L. 94-88, title II, § 208(b), (c), 89 Stat. 436; May 23, 1977, Pub. L. 95-30, title V, § 502(a), 91 Stat. 162; June 9, 1980, Pub. L. 96-265, title IV, § 405(b), 94 Stat. 463; Dec. 28, 1980, Pub. L. 96-611, § 9(a), 94 Stat. 3571; Aug. 13, 1981, Pub. L. 97-35, title XXIII, §§ 2331(b), 2332(d), 2333(a), (b), 2335(a), 95 Stat. 860, 862, 863; Sept. 3, 1982, Pub. L. 97-248, title I, §§ 171(a), (b)(1), 173(a), 96 Stat. 401, 403; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(c)(14), (j)(2)(B)(x), 98 Stat. 1166, 1170; Aug. 16, 1984, Pub. L. 98-378, §§ 3(a), (c), (d)-(f), 5(b), 6(a), 11(b)(1), 12(a), (b), 14(a), 21(d), 98 Stat. 1306, 1310, 1311, 1314, 1318, 1319, 1320, 1324.)

REFERENCES IN TEXT

Parts A and E of this subchapter, referred to in pars. (4) and (5), are classified to section 601 et seq. and 670 et seq., respectively, of this title.

AMENDMENTS

1984—Par. (4)(B). Pub. L. 98-378, § 11(b)(1), inserted "including an assignment with respect to a child on whose behalf a State agency is making foster care maintenance payments under part E of this subchapter," after "such assignment is effective," and inserted "or E" after "part A".

Par. (4)(B). Pub. L. 98-378, § 12(a), substituted ", and" for "and, at the option of the State," before "from such parent" and inserted ", and only if the support obligation established with respect to the child is being enforced under the plan".

Par. (5). Pub. L. 98-378, § 3(e), inserted ", and the individual will be notified at least annually of the amount of the support payments collected;".

Par. (6)(A). Pub. L. 98-378, § 12(b), struck out ", at the option of the State," before "support collection services" and inserted ", and only if the support obligation established with respect to the child is being enforced under the plan".

Par. (6)(B). Pub. L. 98-378, § 3(c), substituted "shall be imposed, which shall be paid by the individual applying for such services, or recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and shall be considered income to the program), the amount of which (i) will not exceed $25 (or such higher or lower amount (which shall be uniform for all States) as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in administrative costs), and (ii) may vary among such individuals on the basis of ability to pay (as determined by the State), and" for "may be imposed, except that the amount of any such application fee shall be reasonable, as determined under regulations of the Secretary,".

Par. (6)(C). Pub. L. 98-378, § 21(d)(1), (3), added cl. (C). Former cl. (C) redesignated (D).

Par. (6)(D). Pub. L. 98-378, § 21(d)(1), (2), redesignated former cl. (C) as (D) and in cl. (D) as so redesignated, substituted "fees" for "fee" before "so imposed".

Par. (8)(B). Pub. L. 98-369, § 2663(j)(2)(B)(x), substituted "Health and Human Services" for "Health, Education, and Welfare".

Par. (9)(C). Pub. L. 98-369, § 2663(c)(14)(A), struck out "of such parent" before "with respect to whom aid".

Par. (16)(A)(ii). Pub. L. 98-369, § 2663(c)(14)(B), substituted "collection, and distribution" for "collection and distribution," before "of incentive payments".

Par. (16)(D), (E). Pub. L. 98-378, § 6(a), added cl. (D) and redesignated former cl. (D) as (E).

Par. (17). Pub. L. 98-378, § 2663(c)(14)(C), realigned margin, substituted "provide that the State will accept" for "to accept", "will impose" for "and to impose", "will transmit" for "to transmit", and "will otherwise comply" for ", otherwise to comply".

Par. (20). Pub. L. 98-378, § 3(a), added par. (20).

Par. (21). Pub. L. 98-378, § 3(d), added par. (21).

Par. (22). Pub. L. 98-378, § 5(b), added par. (22).

Par. (23). Pub. L. 98-378, § 14(a), added par. (23).

Pub. L. 98-378, § 3(f), inserted after numbered paragraphs provision that the State may allow the jurisdiction which makes the collection involved to retain any application fee under par. (6)(B) or any late payment fee under par. (21).

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 3(g) of Pub. L. 98-378 provided that:

"(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [enacting section 668 of this title and amending section 654 of this title] shall become effective on October 1, 1985.

"(2) Section 454(21) of the Social Security Act (as added by subsection (d) of this section) [42 U.S.C. 654(21)], and section 466(e) of such Act (as added by subsection (b) of this section) [42 U.S.C. 666(e)], shall be effective with respect to support owed for any month beginning after the date of the enactment of this Act [Aug. 16, 1984].

"(3) In the case of a State with respect to which the Secretary of Health and Human Services has determined that State legislation is required in order to conform the State plan approved under part D of title IV of the Social Security Act [this part] to the requirements imposed by any amendment made by this section, the State plan shall not be regarded as failing to comply with the requirements of such part solely by reason of its failure to meet the requirements imposed by such amendment prior to the beginning of the fourth month beginning after the end of the first session of the State legislature which ends on or after October 1, 1985. For purposes of the preceding sentence, the term 'session' means a regular, special, budget, or other session of a State legislature."

Amendment by section 5(b) of Pub. L. 98-378 effective Oct. 1, 1985, see section 5(c)(1) of Pub. L. 98-378, set out as a note under section 658 of this title.

Section 6(c) of Pub. L. 98-378 provided that: "The amendments made by this section [amending sections 654 and 655 of this title] shall apply with respect to quarters beginning on or after October 1, 1984."

Section 11(e) of Pub. L. 98-378 provided that: "The amendments made by this section [amending sections 654, 656, 657, 664, and 671 of this title] shall become effective October 1, 1984, and shall apply to collections made on or after that date."

Section 12(c) of Pub. L. 98-378 provided that: "The amendments made by this section [amending this section] shall become effective October 1, 1985."

Section 14(b) of Pub. L. 98-378 provided that: "The amendments made by subsection (a) [amending this section] shall become effective October 1, 1985."

Amendment by section 21(d) of Pub. L. 98-378 applicable with respect to refunds payable under section 6402 of Title 26, Internal Revenue Code, after Dec. 31, 1985, see section 21(g) of Pub. L. 98-378, set out as a note under section 6103 of Title 26.

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

STATE COMMISSIONS ON CHILD SUPPORT

Section 15 of Pub. L. 98-378 provided that:

"(a) As a condition of the State's eligibility for Federal payments under part A or D of title IV of the Social Security Act [part A of this subchapter or this part] for quarters beginning more than 30 days after the date of the enactment of this Act [Aug. 16, 1984] and ending prior to October 1, 1985, the Governor of each State, on or before December 1, 1984, shall (subject to subsection (f)) appoint a State Commission on Child Support.

"(b) Each State Commission appointed under subsection (a) shall be composed of members appropriately representing all aspects of the child support system, including custodial and non-custodial parents, the agency or organizational unit administering the State's plan under part D of such title IV [this part], the State judiciary, the executive and legislative branches of the State government, child welfare and social services agencies, and others.

"(c) It shall be the function of each State Commission to examine, investigate, and study the operation of the State's child support system for the primary purpose of determining the extent to which such system has been successful in securing support and parental involvement both for children who are eligible for aid under a State plan approved under part A of title IV of such Act [part A of this subchapter] and for children who are not eligible for such aid, giving particular attention to such specific problems (among others) as visitation, the establishment of appropriate objective standards for support, the enforcement of interstate obligations, the availability, cost, and effectiveness of services both to children who are eligible for such aid and to children who are not, and the need for additional State or Federal legislation to obtain support for all children.

"(d) Each State Commission shall submit to the Governor of the State and make available to the public, no later than October 1, 1985, a full and complete report of its findings and recommendations resulting from the examination, investigation, and study under this section. The Governor shall transmit such report to the Secretary of Health and Human Services along with the Governor's comments thereon.

"(e) None of the costs incurred in the establishment and operation of a State Commission under this section, or incurred by such a Commission in carrying out its functions under subsections (c) and (d), shall be

considered as expenditures qualifying for Federal payments under part A or D of title IV of the Social Security Act [part A of this subchapter or this part] or be otherwise payable or reimbursable by the United States or any agency thereof.

"(f) If the Secretary determines, at the request of any State on the basis of information submitted by the State and such other information as may be available to the Secretary, that such State—

"(1) has placed in effect and is implementing objective standards for the determination and enforcement of child support obligations,

"(2) has established within the five years prior to the enactment of this Act [Aug. 16, 1984] a commission or council with substantially the same functions as the State Commissions provided for under this section, or

"(3) is making satisfactory progress toward fully effective child support enforcement and will continue to do so,

then such State shall not be required to establish a State Commission under this section and the preceding provisions of this section shall not apply."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 503, 652, 655, 656, 683, 664, 666, 1315, 1396k of this title; title 26 section 6103.

§ 655. Payments to States

(a) Amounts payable each quarter

(1) From the sums appropriated therefor, the Secretary shall pay to each State for each quarter, an amount—

(A) equal to the percent specified in paragraph (2) of the total amounts expended by such State during such quarter for the operation of the plan approved under section 654 of this title, and

(B) equal to 90 percent (rather than the percent specified in subparagraph (A)) of so much of the sums expended during such quarter as are attributable to the planning, design, development, installation or enhancement of an automatic data processing and information retrieval system (including in such sums the full cost of the hardware components of such system) which the Secretary finds meets the requirements specified in section 654(16) of this title, or meets such requirements without regard to clause (D) thereof;

except that no amount shall be paid to any State on account of amounts expended to carry out an agreement which it has entered into pursuant to section 663 of this title. In determining the total amounts expended by any State during a quarter, for purposes of this subsection, there shall be excluded an amount equal to the total of any fees collected or other income resulting from services provided under the plan approved under this part.

(2) The percent applicable to quarters in a fiscal year for purposes of paragraph (1)(A) is—

(A) 70 percent for fiscal years 1984, 1985, 1986, and 1987,

(B) 68 percent for fiscal years 1988 and 1989, and

(C) 66 percent for fiscal year 1990 and each fiscal year thereafter.

[*See main edition for text of* (b)]

(c) Repealed. Pub. L. 97-248, title I, § 174(b), Sept. 3, 1982, 96 Stat. 403

[*See main edition for text of* (d)]

(e) Special project grants for interstate enforcement; appropriations

(1) In order to encourage and promote the development and use of more effective methods of enforcing support obligations under this part in cases where either the children on whose behalf the support is sought or their absent parents do not reside in the State where such cases are filed, the Secretary is authorized to make grants, in such amounts and on such terms and conditions as the Secretary determines to be appropriate, to States which propose to undertake new or innovative methods of support collection in such cases and which will use the proceeds of such grants to carry out special projects designed to demonstrate and test such methods.

(2) A grant under this subsection shall be made only upon a finding by the Secretary that the project involved is likely to be of significant assistance in carrying out the purpose of this subsection; and with respect to such project the Secretary may waive any of the requirements of this part which would otherwise be applicable, to such extent and for such period as the Secretary determines is necessary or desirable in order to enable the State to carry out the project.

(3) At the time of its application for a grant under this subsection the State shall submit to the Secretary a statement describing in reasonable detail the project for which the proceeds of the grant are to be used, and the State shall from time to time thereafter submit to the Secretary such reports with respect to the project as the Secretary may specify.

(4) Amounts expended by a State in carrying out a special project assisted under this section shall be considered, for purposes of section 658(b) of this title (as amended by section 5(a) of the Child Support Enforcement Amendments of 1984), to have been expended for the operation of the State's plan approved under section 654 of this title.

(5) There is authorized to be appropriated the sum of $7,000,000 for fiscal year 1985, $12,000,000 for fiscal year 1986, and $15,000,000 for each fiscal year thereafter, to be used by the Secretary in making grants under this subsection.

(Aug. 14, 1935, ch. 531, title IV, § 455, as added Jan. 4, 1975, Pub. L. 93-647, § 101(a), 88 Stat. 2355, and amended Aug. 9, 1975, Pub. L. 94-88, title II, §§ 201(c), 205, 89 Stat. 433, 435; July 14, 1976, Pub. L. 94-365, § 3, 90 Stat. 990; June 30, 1977, Pub. L. 95-59, § 4, 91 Stat. 255; Jan. 2, 1980, Pub. L. 96-178, § 2(a), 93 Stat. 1295; June 9, 1980, Pub. L. 96-265, title IV, §§ 404(a), 405(a), 407(a), (b), 94 Stat. 463, 467; Dec. 28, 1980, Pub. L. 96-611, §§ 9(c), 11(c), 94 Stat. 3573, 3574; Aug. 13, 1981, Pub. L. 97-35, title XXIII, § 2333(c), 95 Stat. 863; Sept. 3, 1982, Pub. L. 97-248, title I, §§ 171(b)(2), 174(a), (b), 96 Stat. 401, 403; Aug. 16, 1984, Pub. L. 98-378, §§ 4(a), 6(b), 8, 98 Stat. 1311, 1314, 1315.)

REFERENCES IN TEXT

Section 5(a) of the Child Support Enforcement Amendments of 1984, referred to in subsec. (e)(4), is section 5(a) of Pub. L. 98-378, which amended section 658 of this title.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-378, § 4(a)(1)-(5), designated existing provisions as par. (1) and in par. (1) as so designated, struck out ", beginning with the quarter commencing July 1, 1975," after "for each quarter", substituted subpar. (A) for former par. (1) which provided for an amount equal to 70 percent of the total amounts expended by the State during the quarter for the operation of the plan approved under section 654 of this title, struck out former par. (2) which provided for an amount equal to 50 percent of the total amounts expended by the State during the quarter for the operation of a plan which met the conditions of section 654 of this title except as was provided by a waiver by the Secretary which was granted pursuant to specific authority set forth in the law, redesignated former par. (3) as subpar. (B) of par. (1), and in subpar. (B) as so redesignated, substituted "subparagraph (A)" for "clause (1) or (2)", and inserted "(including in such sums the full cost of the hardware components of such system)" and ", or meets such requirements without regard to clause (D) thereof".

Subsec. (a)(2). Pub. L. 98-378, § 4(a)(6), added par. (2). Former par. (2) was struck out.

Subsec. (a)(3). Pub. L. 98-378, § 4(a)(3), redesignated par. (3) of subsec. (a) as subpar. (B) of subsec. (a)(1).

Subsec. (e). Pub. L. 98-378, § 8, added subsec. (e).

1982—Subsec. (c). Pub. L. 97-248, § 174(b), struck out subsec. (c) which had provided that expenditures of courts of a State or its political subdivisions in connection with performance of services related to the operation of a plan approved under section 654 of this title, would be included in determining the amounts expended by a State during any quarter for the operation of such plan, that the aggregate amount of such expenditures would be reduced by the total amount of those expenditures made by a State for the 12-month period beginning on Jan. 1, 1978, and that a State agency could, under State law, pay the courts of the State from amounts received under subsec. (a) of this section.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 4(a) of Pub. L. 98-378 applicable to fiscal years after fiscal year 1983, see section 4(c) of Pub. L. 98-378, set out as a note under section 652 of this title.

Amendment by section 6(b) of Pub. L. 98-378 applicable with respect to quarters beginning on or after Oct. 1, 1984, see section 6(c) of Pub. L. 98-378, set out as a note under section 654 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 603a, 652, 658, 1315 of this title; title 2 section 906.

§ 656. Support obligation as obligation to State; amount; discharge in bankruptcy

(a)(1) The support rights assigned to the State under section 602(a)(26) of this title or secured on behalf of a child receiving foster care maintenance payments shall constitute an obligation owed to such State by the individual responsible for providing such support. Such obligation shall be deemed for collection purposes to be collectible under all applicable State and local processes.

(2) The amount of such obligation shall be—

(A) the amount specified in a court order which covers the assigned support rights, or

(B) if there is no court order, an amount determined by the State in accordance with a formula approved by the Secretary, and

(3) Any amounts collected from an absent parent under the plan shall reduce, dollar for dollar, the amount of his obligation under subparagraphs (A) and (B) of paragraph (2).

(b) A debt which is a child support obligation assigned to a State under section 602(a)(26) of this title is not released by a discharge in bankruptcy under title 11.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(c)(15), 98 Stat. 1167; Aug. 16, 1984, Pub. L. 98-378, § 11(b)(2), 98 Stat. 1318.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-378, § 11(b)(2), inserted "or secured on behalf of a child receiving foster care maintenance payments" after "section 602(a)(26) of this title".

Pub. L. 98-369, § 2663(c)(15)(A), designated existing unenumerated provisions as par. (1). Former par. (1) redesignated (2).

Subsec. (a)(2). Pub. L. 98-369, § 2663(c)(15)(B), redesignated former par. (1) as (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 98-369, § 2663(c)(15)(C), (D), redesignated former par. (2) as (3) and substituted "subparagraphs (A) and (B) of paragraph (2)" for "paragraphs (1)(A) and (B)".

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-378 effective Oct. 1, 1984, and applicable to collections made on or after that date, see section 11(e) of Pub. L. 98-378, set out as a note under section 654 of this title.

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 657. Distribution of proceeds

[See main edition for text of (a)]

(b) Amount collected during any fiscal year beginning after September 30, 1976

The amounts collected as support by a State pursuant to a plan approved under this part during any fiscal year beginning after September 30, 1976, shall (subject to subsection (d) of this section) be distributed as follows:

(1) the first $50 of such amounts as are collected periodically which represent monthly support payments shall be paid to the family without affecting its eligibility for assistance or decreasing any amount otherwise payable as assistance to such family during such month;

(2) such amounts as are collected periodically which are in excess of any amount paid to the family under paragraph (1) and which represent monthly support payments shall be retained by the State to reimburse it for assistance payments to the family during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

(3) such amounts as are in excess of amounts retained by the State under para-

graph (2) and are not in excess of the amount required to be paid during such period to the family by a court or administrative order shall be paid to the family; and

(4) such amounts as are in excess of amounts required to be distributed under paragraphs (1), (2), and (3) shall be (A) retained by the State (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing) as reimbursement for any past assistance payments made to the family for which the State has not been reimbursed or (B) if no assistance payments have been made by the State which have not been repaid, such amounts shall be paid to the family.

(c) Collection after termination of assistance; distribution of support proceeds

Whenever a family for whom support payments have been collected and distributed under the plan ceases to receive assistance under part A of this subchapter, the State shall—

[*See main edition for text of (1)*]

(2) at the end of such three-month period, if the State is authorized to do so by the individual on whose behalf the collection will be made, continue to collect amounts of support payments which represent monthly support payments from the absent parent and pay any amount so collected, which represents monthly support payments, to the family (without requiring any formal reapplication and without the imposition of any application fee) on the same basis as in the case of other individuals who are not receiving assistance under part A of this subchapter,

and so much of any amounts of support so collected as are in excess of the payments required to be made in paragraph (1) shall be distributed in the manner provided by subsection (b)(4)(A) and (B) of this section with respect to excess amounts described in subsection (b) of this section.

(d) Disposition of amounts collected by State as child support on behalf of children for whom public agencies make foster care payments

Notwithstanding the preceding provisions of this section, amounts collected by a State as child support for months in any period on behalf of a child for whom a public agency is making foster care maintenance payments under part E of this subchapter—

(1) shall be retained by the State to the extent necessary to reimburse it for the foster care maintenance payments made with respect to the child during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

(2) shall be paid to the public agency responsible for supervising the placement of the child to the extent that the amounts collected exceed the foster care maintenance payments made with respect to the child during such period but not the amounts required by a court or administrative order to be paid as support on behalf of the child during such period; and the responsible agency may use the payments in the manner it determines will serve the best interests of the child, including setting such payments aside for the child's future needs or making all or a part thereof available to the person responsible for meeting the child's day-to-day needs; and

(3) shall be retained by the State, if any portion of the amounts collected remains after making the payments required under paragraphs (1) and (2), to the extent that such portion is necessary to reimburse the State (with appropriate reimbursement to the Federal Government to the extent of its participation in the financing) for any past foster care maintenance payments (or payments of aid to families with dependent children) which were made with respect to the child (and with respect to which past collections have not previously been retained);

and any balance shall be paid to the State agency responsible for supervising the placement of the child, for use by such agency in accordance with paragraph (2).

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2640(b), 98 Stat. 1145; Aug. 16, 1984, Pub. L. 98-378, §§ 7(a), 11(a), 98 Stat. 1315, 1317; Oct. 22, 1986, Pub. L. 99-514, title XVIII, §§ 1883(b)(6), 1899(a), 100 Stat. 2917, 2957.)

REFERENCES IN TEXT

Parts A and E of this subchapter, referred to in subsecs. (c) and (d), are classified to sections 601 et seq. and 670 et seq., respectively, of this title.

AMENDMENTS

1986—Subsec. (b)(3). Pub. L. 99-514, § 1899(a), inserted "or administrative" after "court".

Subsec. (c). Pub. L. 99-514, § 1883(b)(6), substituted "subsection (b)(4)(A) and (B)" for "subsection (b)(3)(A) and (B)".

1984—Subsec. (b). Pub. L. 98-378, § 11(a)(2), inserted "(subject to subsection (d) of this section)" after "shall" in provisions preceding par. (1).

Subsec. (b)(1). Pub. L. 98-369, § 2640(b)(1), added par. (1). Former par. (1) redesignated (2).

Subsec. (b)(2). Pub. L. 98-369, § 2640(b)(1), (2)(A), redesignated former par. (1) as (2), and inserted "which are in excess of any amount paid to the family under paragraph (1) and". Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 98-369, § 2640(b)(1), (2)(B), redesignated former par. (2) as (3), and substituted "paragraph (2)" for "paragraph (1)". Former par. (3) redesignated (4).

Subsec. (b)(4). Pub. L. 98-369, § 2640(b)(1), (2)(C), redesignated former par. (3) as (4), and substituted "paragraphs (1), (2), and (3)" for "paragraphs (1) and (2)".

Subsec. (c). Pub. L. 98-378, § 7(a)(1), substituted "shall" for "may" in provisions preceding par. (1).

Subsec. (c)(2). Pub. L. 98-378, § 7(a)(2), substituted "any amount so collected, which represents monthly support payments, to the family (without requiring any formal reapplication and without the imposition of any application fee) on the same basis as in the case of other individuals who are not receiving assistance under part A of this subchapter," for "the net amount of any amount so collected, which represents monthly support payments, to the family after deducting any costs incurred in making the collection from the amount of any recovery made,".

Subsec. (d). Pub. L. 98-378, § 11(a)(1), added subsec. (d).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1883(b)(6) of Pub. L. 99-514 effective Oct. 22, 1986, see section 1883(f) of Pub. L. 99-514, set out as a note under section 402 of this title.

Section 1899(b) of Pub. L. 99-514 provided that: "The amendment made by this section [amending this section] shall become effective on the date of the enactment of this Act [Oct. 22, 1986]."

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 7(b) of Pub. L. 98-378 provided that: "The amendments made by subsection (a) [amending subsec. (c) of this section] shall become effective October 1, 1984."

Amendment by section 11(a) of Pub. L. 98-378 effective Oct. 1, 1984, and applicable to collections made on or after that date, see section 11(e) of Pub. L. 98-378, set out as a note under section 654 of this title.

Amendment by Pub. L. 98-369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98-369, set out as an Effective and Termination Dates of 1984 Amendments note under section 602 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 602, 603, 652, 654, 664, 666 of this title.

§ 658. Incentive payments to States

(a) Purpose; requirement; quarterly payments

In order to encourage and reward State child support enforcement programs which perform in a cost-effective and efficient manner to secure support for all children who have sought assistance in securing support, whether such children reside within the State or elsewhere and whether or not they are eligible for aid to families with dependent children under a State plan approved under part A of this subchapter, and regardless of the economic circumstances of their parents, the Secretary shall, from support collected which would otherwise represent the Federal share of assistance to families of absent parents, pay to each State for each fiscal year, on a quarterly basis (as described in subsection (e) of this section) beginning with the quarter commencing October 1, 1985, an incentive payment in an amount determined under subsection (b) of this section.

(b) Incentive formula

(1) Except as provided in paragraphs (2), (3), and (4), the incentive payment shall be equal to—

(A) 6 percent of the total amount of support collected under the plan during the fiscal year in cases in which the support obligation involved is assigned to the State pursuant to section 602(a)(26) or section 671(a)(17) of this title (with such total amount for any fiscal year being hereafter referred to in this section as the State's "AFDC collections" for that year), plus

(B) 6 percent of the total amount of support collected during the fiscal year in all other cases under this part (with such total amount for any fiscal year being hereafter referred to in this section as the State's "non-AFDC collections" for that year).

(2) If subsection (c) of this section applies with respect to a State's AFDC collections or non-AFDC collections for any fiscal year, the percent specified in paragraph (1)(A) or (B) (with respect to such collections) shall be increased to the higher percent determined under such subsection (with respect to such collections) in determining the State's incentive payment under this subsection for that year.

(3) The dollar amount of the portion of the State's incentive payment for any fiscal year which is determined on the basis of its non-AFDC collections under paragraph (1)(B) (after adjustment under subsection (c) of this section if applicable) shall in no case exceed—

(A) the dollar amount of the portion of such payment which is determined on the basis of its AFDC collections under paragraph (1)(A) (after adjustment under subsection (c) of this section if applicable) in the case of fiscal year 1986 or 1987;

(B) 105 percent of such dollar amount in the case of fiscal year 1988;

(C) 110 percent of such dollar amount in the case of fiscal year 1989; or

(D) 115 percent of such dollar amount in the case of fiscal year 1990 or any fiscal year thereafter.

(4) The Secretary shall make such additional payments to the State under this part, for fiscal year 1986 or 1987, as may be necessary to assure that the total amount of payments under this section and section 655(a)(1)(A) of this title for such fiscal year is no less than 80 percent of the amount that would have been payable to that State and its political subdivisions for such fiscal year under this section and section 655(a)(1)(A) of this title if those sections (including the amendment made by section 5(c)(2)(A) of the Child Support Enforcement Amendments of 1984) had remained in effect as they were in effect for fiscal year 1985.

(c) Increase in percentage; laboratory costs

If the total amount of a State's AFDC collections or non-AFDC collections for any fiscal year bears a ratio to the total amount expended by the State in that year for the operation of its plan approved under section 654 of this title for which payment may be made under section 655 of this title (with the total amount so expended in any fiscal year being hereafter referred to in this section as the State's "combined AFDC/non-AFDC administrative costs" for that year) which is equal to or greater than 1.4, the relevant percent specified in subparagraph (A) or (B) of subsection (b)(1) of this section (with respect to such collections) shall be increased to—

(1) 6.5 percent, plus

(2) one-half of 1 percent for each full two-tenths by which such ratio exceeds 1.4;

except that the percent so specified shall in no event be increased (for either AFDC collections or non-AFDC collections) to more than 10 percent. For purposes of the preceding sentence, laboratory costs incurred in determining paternity in any fiscal year may at the option of the State be excluded from the State's combined AFDC/non-AFDC administrative costs for that year.

(d) Support collected on behalf of individuals residing in another State

In computing incentive payments under this section, support which is collected by one State at the request of another State shall be treated as having been collected in full by each such State.

(e) Estimates by Secretary; quarterly payments

The amounts of the incentive payments to be made to the various States under this section for any fiscal year shall be estimated by the Secretary at or before the beginning of such year on the basis of the best information available. The Secretary shall make such payments for such year, on a quarterly basis (with each quarterly payment being made no later than the beginning of the quarter involved), in the amounts so estimated, reduced or increased to the extent of any overpayments or underpayments which the Secretary determines were made under this section to the States involved for prior periods and with respect to which adjustment has not already been made under this subsection. Upon the making of any estimate by the Secretary under the preceding sentence, any appropriations available for payments under this section shall be deemed obligated.

(As amended Sept. 3, 1982, Pub. L. 97-248, title I, § 174(c), 96 Stat. 403; Aug. 16, 1984, Pub. L. 98-378, § 5(a), (c)(2)(A), 98 Stat. 1312, 1314; Oct. 22, 1986, Pub. L. 99-514, title XVIII, § 1883(b)(7), 100 Stat. 2917.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsec. (a), is classified to section 601 et seq. of this title.

Section 5(c)(2)(A) of the Child Support Enforcement Amendments of 1984, referred to in subsec. (b)(4), is section 5(c)(2)(A) of Pub. L. 98-378, which amended subsec. (a) of this section. See 1984 Amendment note below.

AMENDMENTS

1986—Subsec. (d). Pub. L. 99-514 substituted "at the request of" for "on behalf of individuals residing in".

1984—Subsec. (a). Pub. L. 98-378, § 5(a), in amending subsec. (a) generally, substituted general provisions relating to payments to States to encourage and reward State child support enforcement programs which perform in a cost-effective and efficient manner for provisions which required payment to States and localities making enforcement and collection of support rights assigned under section 602(a)(26) of this title.

Pub. L. 98-378, § 5(c)(2)(A), temporarily substituted "distributed as provided in paragraphs (1), (2), and (4)(A) of section 657(b) of this title" for "distributed as provided in section 657 of this title to reduce or repay assistance payments". See Effective and Termination Dates of 1984 Amendment note below.

Subsec. (b). Pub. L. 98-378, § 5(a), in amending subsec. (b) generally, substituted provisions relating to an incentive formula for payments under this section for provisions relating to the allocation of payments among jurisdictions involved in enforcement or collection under this section.

Subsec. (c). Pub. L. 98-378, § 5(a), in amending subsec. (c) generally, substituted provisions relating to an increase in percentages of payments under this section and relating to laboratory costs for provisions relating to collection and distribution in accordance with a State plan approved under seetion 654 of this title.

Subsecs. (d), (e). Pub. L. 98-378, § 5(a), in amending section generally, added subsecs. (d) and (e).

1982—Subsec. (a). Pub. L. 97-248 substituted "12 percent" for "15 per centum".

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENT

Section 5(c)(1) of Pub. L. 98-378 provided that: "The amendments made by the preceding provisons of this section [amending sections 654 and 658 of this title] shall become effective on October 1, 1985."

Section 5(c)(2)(A) of Pub. L. 98-378 provided in part that the amendment by that section is effective until Sept. 30, 1985.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-248 applicable with respect to amounts collected on or after Oct. 1, 1983, see section 174(d) of Pub. L. 97-248, set out as a note under section 655 of this title.

CONSTRUCTION OF REFERENCE TO SECTION 657(b) OF THIS TITLE

Section 5(c)(2)(B) of Pub. L. 98-378 provided that: "The reference to provisions of section 457(b) of the Social Security Act [section 657(b) of this title] in the amendment made by subparagraph (A) of this paragraph [amending subsee. (a) of this section] is a reference to sueh provisions as in effect after the effective date of section 2640(b) of the Deficit Reduction Act of 1984 [effective date of section 2640(b) of Pub. L. 98-369, Oct. 1, 1984]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 654, 655 of this title; title 2 section 906.

§ 659. Enforcement of individual's legal obligations to provide child support or make allmony payments

(a) United States and District of Columbia to be subject to legal process

Notwithstanding any other provision of law (including section 407 of this title), effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States or the District of Columbia (including any agency, subdivision, or instrumentality thereof) to any individual, including members of the armed services, shall be subject, in like manner and to the same extent as if the United Statcs or the District of Columbia were a private person, to legal process brought for the enforcement, against such individual of his legal obligations to provide child support or make alimony payments,

[*See main edition for text of (b) to (f)*]

(As amended Apr. 20, 1983, Pub. L. 98-21, title III, § 335(b)(1), 97 Stat. 130.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-21 inserted reference to section 407 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 661, 662 of this title; title 5 section 8437; title 10 section 1408.

§ 660. Civil action to enforce child support obligations; jurisdiction of district courts

The district courts of the United States shall have jurisdiction, without regard to any amount in controversy, to hear and determine any civil action certified by the Secretary of Health and Human Services under section 652(a)(8) of this title. A civil action under this

section may be brought in any judicial district in which the claim arose, the plaintiff resides, or the defendant resides.

(Aug. 14, 1935, ch. 531, title IV, § 460, as added Jan. 4, 1975, Pub. L. 93-647, § 101(a), 88 Stat. 2358, and amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(j)(2)(B)(xi), 98 Stat. 1170.)

AMENDMENTS

1984—Pub. L. 98-369 substituted "Health and Human Services" for "Health, Education, and Welfare".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 662. Definitions

For purposes of section 659 of this title—

[*See main edition for text of (a) to (e)*]

(f) Entitlement of an individual to any money shall be deemed to be "based upon remuneration for employment", if such money consists of—

[*See main edition for text of (1)*]

(2) periodic benefits (including a periodic benefit as defined in section 428(h)(3) of this title) or other payments to such individual under the insurance system established by subchapter II of this chapter or any other system or fund established by the United States (as defined in subsection (a) of this section) which provides for the payment of pensions, retirement or retired pay, annuities, dependents' or survivors' benefits, or similar amounts payable on account of personal services performed by himself or any other individual (not including any payment as compensation for death under any Federal program, any payment under any Federal program established to provide "black lung" benefits, any payment by the Veterans' Administration as pension, or any payments by the Veterans' Administration as compensation for a service-connected disability or death, except any compensation paid by the Veterans' Administration to a former member of the Armed Forces who is in receipt of retired or retainer pay if such former member has waived a portion of his retired pay in order to receive such compensation), and does not consist of amounts paid, by way of reimbursement or otherwise, to such individual by his employer to defray expenses incurred by such individual in carrying out duties associated with his employment.

(g) In determining the amount of any moneys due from, or payable by, the United States to any individual, there shall be excluded amounts which—

[*See main edition for text of (1) and (2)*]

(3) are properly withheld for Federal, State, or local income tax purposes, if the withholding of such amounts is authorized or required by law and if amounts withheld are not greater than would be the case if such individual claimed all dependents to which he was entitled (the withholding of additional amounts pursuant to section 3402(i) of the Internal Revenue Code of 1986 may be permitted only when such individual presents evidence of a tax obligation which supports the additional withholding),

[*See main edition for text of (4) to (6)*]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(c)(17), 98 Stat. 1167; Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (g)(3), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1986—Subsec. (g)(3). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1984—Subsec. (f)(2). Pub. L. 98-369 substituted "dependents' or survivors' benefits" for "dependents or survivors' benefits".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 664. Collection of past-due support from Federal tax refunds

(a) Procedures applicable; distribution

(1) Upon receiving notice from a State agency administering a plan approved under this part that a named individual owes past-due support which has been assigned to such State pursuant to section 602(a)(26) or section 671(a)(17) of this title, the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such individual (regardless of whether such individual filed a tax return as a married or unmarried individual). If the Secretary of the Treasury finds that any such amount is payable, he shall withhold from such refunds an amount equal to the past-due support, shall concurrently send notice to such individual that the withholding has been made (including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund), and shall pay such amount to the State agency (together with notice of the individual's home address) for distribution in accordance with section 657(b)(4) or (d)(3) of this title.

(2)(A) Upon receiving notice from a State agency administering a plan approved under this part that a named individual owes past-due support (as that term is defined for purposes of this paragraph under subsection (c) of this section) which such State has agreed to collect under section 654(6) of this title, and that the

State agency has sent notice to such individual in accordance with paragraph (3)(A), the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such individual (regardless of whether such individual filed a tax return as a married or unmarried individual). If the Secretary of the Treasury finds that any such amount is payable, he shall withhold from such refunds an amount equal to such past-due support, and shall concurrently send notice to such individual that the withholding has been made, including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund. The Secretary of the Treasury shall pay the amount withheld to the State agency, and the State shall pay to the Secretary of the Treasury any fee imposed by the Secretary of the Treasury to cover the costs of the withholding and any required notification. The State agency shall, subject to paragraph (3)(B), distribute such amount to or on behalf of the child to whom the support was owed.

(B) This paragraph shall apply only with respect to refunds payable under section 6402 of the Internal Revenue Code of 1986 after December 31, 1985, and before January 1, 1991.

(3)(A) Prior to notifying the Secretary of the Treasury under paragraph (1) or (2) that an individual owes past-due support, the State shall send notice to such individual that a withholding will be made from any refund otherwise payable to such individual. The notice shall also (i) instruct the individual owing the past-due support of the steps which may be taken to contest the State's determination that past-due support is owed or the amount of the past-due support, and (ii) provide information, as may be prescribed by the Secretary of Health and Human Services by regulation in consultation with the Secretary of the Treasury, with respect to procedures to be followed, in the case of a joint return, to protect the share of the refund which may be payable to another person.

(B) If the Secretary of the Treasury determines that an amount should be withheld under paragraph (1) or (2), and that the refund from which it should be withheld is based upon a joint return, the Secretary of the Treasury shall notify the State that the withholding is being made from a refund based upon a joint return, and shall furnish to the State the names and addresses of each taxpayer filing such joint return. In the case of a withholding under paragraph (2), the State may delay distribution of the amount withheld until the State has been notified by the Secretary of the Treasury that the other person filing the joint return has received his or her proper share of the refund, but such delay may not exceed six months.

(C) If the other person filing the joint return with the named individual owing the past-due support takes appropriate action to secure his or her proper share of a refund from which a withholding was made under paragraph (1) or (2), the Secretary of the Treasury shall pay such share to such other person. The Secretary of the Treasury shall deduct the amount of such payment from amounts subsequently payable to the State agency to which the amount originally withheld from such refund was paid.

(D) In any case in which an amount was withheld under paragraph (1) or (2) and paid to a State, and the State subsequently determines that the amount certified as past-due support was in excess of the amount actually owed at the time the amount withheld is to be distributed to or on behalf of the child, the State shall pay the excess amount withheld to the named individual thought to have owed the past-due support (or, in the case of amounts withheld on the basis of a joint return, jointly to the parties filing such return).

(b) Regulations; contents, etc.

(1) The Secretary of the Treasury shall issue regulations, approved by the Secretary of Health and Human Services, prescribing the time or times at which States must submit notices of past-due support, the manner in which such notices must be submitted, and the necessary information that must be contained in or accompany the notices. The regulations shall be consistent with the provisions of subsection (a)(3) of this section, shall specify the minimum amount of past-due support to which the offset procedure established by subsection (a) of this section, may be applied, and the fee that a State must pay to reimburse the Secretary of the Treasury for the full cost of applying the offset procedure, and shall provide that the Secretary of the Treasury will advise the Secretary of Health and Human Services, not less frequently than annually, of the States which have furnished notices of past-due support under subsection (a) of this section, the number of cases in each State with respect to which such notices have been furnished, the amount of support sought to be collected under this subsection by each State, and the amount of such collections actually made in the case of each State. Any fee paid to the Secretary of the Treasury pursuant to this subsection may be used to reimburse appropriations which bore all or part of the cost of applying such procedure.

(2) In the case of withholdings made under subsection (a)(2) of this section, the regulations promulgated pursuant to this subsection shall include the following requirements:

(A) The withholding shall apply only in the case where the State determines that the amount of the past-due support which will be owed at the time the withholding is to be made, based upon the pattern of payment of support and other enforcement actions being pursued to collect the past-due support, is equal to or greater than $500. The State may limit the $500 threshold amount to amounts of past-due support accrued since the time that the State first began to enforce the child support order involved under the State plan, and may limit the application of the withholding to past-due support accrued since such time.

(B) The fee which the Secretary of the Treasury may impose to cover the costs of

the withholding and notification may not exceed $25 per case submitted.

(c) "Past-due support" defined

(1) Except as provided in paragraph (2), as used in this part the term "past-due support" means the amount of a delinquency, determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child, or of a child and the parent with whom the child is living.

(2) For purposes of subsection (a)(2) of this section, the term "past-due support" means only past-due support owed to or on behalf of a minor child.

(As amended Aug. 16, 1984, Pub. L. 98-378, §§ 11(d), 21(a)-(c), 98 Stat. 1318, 1322, 1324; Oct. 22, 1986, Pub. L. 99-514, § 2, title XVIII, § 1883(b)(8), 100 Stat. 2095, 2917.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (a)(2)(B), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1986—Subsec. (a)(2)(B). Pub. L. 99-514, § 2, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (b)(2)(A). Pub. L. 99-514, § 1883(b)(8), substituted "threshold" for "threshhold".

1984—Subsec. (a). Pub. L. 98-378, § 21(a), (b)(1), designated existing provisions as par. (1), substituted "shall concurrently send notice to such individual that the withholding has been made (including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund), and shall pay" for "and pay", and added pars. (2) and (3).

Pub. L. 98-378, § 11(d), inserted "or section 671(a)(17)" and substituted "section 657(b)(4) or (d)(3)" for "section 657(b)(3)".

Subsec. (b)(1). Pub. L. 98-378, § 21(b)(2), designated existing provisions as par. (1), substituted "The regulations shall be consistent with the provisions of subsection (a)(3) of this section, shall specify" for "The regulations shall specify", substituted "and shall provide" for "and provide", inserted provision that any fee paid to the Secretary of the Treasury pursuant to subsec. (b) may be used to reimburse appropriations which bore all or part of the cost of applying such procedure, and added par. (2).

Subsec. (c)(1). Pub. L. 98-378, § 21(c), designated existing provisions as par. (1), inserted reference to par. (2), and added par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 11(d) of Pub. L. 98-378 effective Oct. 1, 1984, and applicable to collections made on or after that date, see section 11(e) of Pub. L. 98-378, set out as a note under section 654 of this title.

Amendment by section 21(a) to (c) of Pub. L. 98-378 applicable with respect to refunds payable under section 6402 of Title 26, Internal Revenue Code, after Dec. 31, 1985, see section 21(g) of Pub. L. 98-378, set out as a note under section 6103 of Title 26.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 654 of this title; title 26 sections 6103, 6402; title 31 section 3720A.

§ 666. Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement

(a) Types of procedures required

In order to satisfy section 654(20)(A) of this title, each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:

(1) Procedures described in subsection (b) of this section for the withholding from income of amounts payable as support.

(2) Procedures under which expedited processes (determined in accordance with regulations of the Secretary) are in effect under the State judicial system or under State administrative processes (A) for obtaining and enforcing support orders, and (B) at the option of the State, for establishing paternity. The Secretary may waive the provisions of this paragraph with respect to one or more political subdivisions within the State on the basis of the effectiveness and timeliness of support order issuance and enforcement within the political subdivision (in accordance with the general rule for exemptions under subsection (d) of this section).

(3) Procedures under which the State child support enforcement agency shall request, and the State shall provide, that for the purpose of enforcing a support order under any State plan approved under this part—

(A) any refund of State income tax which would otherwise be payable to an absent parent will be reduced, after notice has been sent to that absent parent of the proposed reduction and the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State), by the amount of any overdue support owed by such absent parent;

(B) the amount by which such refund is reduced shall be distributed in accordance with section 657(b)(4) or (d)(3) of this title in the case of overdue support assigned to a State pursuant to section 602(a)(26) or 671(a)(17) of this title, or, in the case of overdue support which a State has agreed to collect under section 654(6) of this title, shall be distributed, after deduction of any fees imposed by the State to cover the costs of collection, to the child or parent to whom such support is owed; and

(C) notice of the absent parent's social security account number (or numbers, if he has more than one such number) and home address shall be furnished to the State agency requesting the refund offset, and to the State agency enforcing the order.

(4) Procedures under which liens are imposed against real and personal property for amounts of overdue support owed by an absent parent who resides or owns property in the State.

(5) Procedures which permit the establishment of the paternity of any child at any

time prior to such child's eighteenth birthday.

(6) Procedures which require that an absent parent give security, post a bond, or give some other guarantee to secure payment of overdue support, after notice has been sent to such absent parent of the proposed action and of the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State).

(7) Procedures by which information regarding the amount of overdue support owed by an absent parent residing in the State will be made available to any consumer reporting agency (as defined in section 1681a(f) of title 15) upon the request of such agency; except that (A) if the amount of the overdue support involved in any case is less than $1,000, information regarding such amount shall be made available only at the option of the State, (B) any information with respect to an absent parent shall be made available under such procedures only after notice has been sent to such absent parent of the proposed action, and such absent parent has been given a reasonable opportunity to contest the accuracy of such information (and after full compliance with all procedural due process requirements of the State), and (C) a fee for furnishing such information, in an amount not exceeding the actual cost thereof, may be imposed on the requesting agency by the State.

(8) Procedures under which all child support orders which are issued or modified in the State will include provision for withholding from wages, in order to assure that withholding as a means of collecting child support is available if arrearages occur without the necessity of filing application for services under this part.

(9) Procedures which require that any payment or installment of support under any child support order, whether ordered through the State judicial system or through the expedited processes required by paragraph (2), is (on and after the date it is due)—

(A) a judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced,

(B) entitled as a judgment to full faith and credit in such State and in any other State, and

(C) not subject to retroactive modification by such State or by any other State;

except that such procedures may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.

Notwithstanding section 654(20)(B) of this title, the procedures which are required under paragraphs (3), (4), (6), and (7) need not be used or applied in cases where the State determines (using guidelines which are generally available within the State and which take into account the payment record of the absent parent, the availability of other remedies, and other relevant considerations) that such use or application would not carry out the purposes of this part or would be otherwise inappropriate in the circumstances.

(b) Withholding from income of amounts payable as support

The procedures referred to in subsection (a)(1) of this section (relating to the withholding from income of amounts payable as support) must provide for the following:

(1) In the case of each absent parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of such parent's wages (as defined by the State for purposes of this section) must be withheld, in accordance with the succeeding provisions of this subsection, as is necessary to comply with the order and provide for the payment of any fee to the employer which may be required under paragraph (6)(A), up to the maximum amount permitted under section 1673(b) of title 15. If there are arrearages to be collected, amounts withheld to satisfy such arrearages, when added to the amounts withheld to pay current support and provide for the fee, may not exceed the limit permitted under such section 1673(b), but the State need not withhold up to the maximum amount permitted under such section in order to satisfy arrearages.

(2) Such withholding must be provided without the necessity of any application therefor in the case of a child (whether or not eligible for aid under part A of this subchapter) with respect to whom services are already being provided under the State plan under this part, and must be provided in accordance with this subsection on the basis of an application for services under the State plan in the case of any other child in whose behalf a support order has been issued or modified in the State. In either case such withholding must occur without the need for any amendment to the support order involved or for any further action (other than those actions required under this part) by the court or other entity which issued such order.

(3) An absent parent shall become subject to such withholding, and the advance notice required under paragraph (4) shall be given, on the earliest of—

(A) the date on which the payments which the absent parent has failed to make under such order are at least equal to the support payable for one month,

(B) the date as of which the absent parent requests that such withholding begin, or

(C) such earlier date as the State may select.

(4)(A) Such withholding must be carried out in full compliance with all procedural due process requirements of the State, and (subject to subparagraph (B)) the State must send advance notice to each absent parent to whom paragraph (1) applies regarding the

proposed withholding and the procedures such absent parent should follow if he or she desires to contest such withholding on the grounds that withholding (including the amount to be withheld) is not proper in the case involved because of mistakes of fact. If the absent parent contests such withholding on those grounds, the State shall determine whether such withholding will actually occur, shall (within no more than 45 days after the provision of such advance notice) inform such parent of whether or not withholding will occur and (if so) of the date on which it is to begin, and shall furnish such parent with the information contained in any notice given to the employer under paragraph (6)(A) with respect to such withholding.

(B) The requirement of advance notice set forth in the first sentence of subparagraph (A) shall not apply in the case of any State which has a system of income withholding for child support purposes in effect on August 16, 1984, if such system provides on that date, and continues to provide, such procedures as may be necessary to meet the procedural due process requirements of State law.

(5) Such withholding must be administered by a public agency designated by the State, and the amounts withheld must be expeditiously distributed by the State or such agency in accordance with section 657 of this title under procedures (specified by the State) adequate to document payments of support and to track and monitor such payments, except that the State may establish or permit the establishment of alternative procedures for the collection and distribution of such amounts (under the supervision of such public agency) otherwise than through such public agency so long as the entity making such collection and distribution is publicly accountable for its actions taken in carrying out such procedures, and so long as such procedures will assure prompt distribution, provide for the keeping of adequate records to document payments of support, and permit the tracking and monitoring of such payments.

(6)(A)(i) The employer of any absent parent to whom paragraph (1) applies, upon being given notice as described in clause (ii), must be required to withhold from such absent parent's wages the amount specified by such notice (which may include a fee, established by the State, to be paid to the employer unless waived by such employer) and pay such amount (after deducting and retaining any portion thereof which represents the fee so established) to the appropriate agency (or other entity authorized to collect the amounts withheld under the alternative procedures described in paragraph (5)) for distribution in accordance with section 657 of this title.

(ii) The notice given to the employer shall contain only such information as may be necessary for the employer to comply with the withholding order.

(B) Methods must be established by the State to simplify the withholding process for employers to the greatest extent possible, including permitting any employer to combine all withheld amounts into a single payment to each appropriate agency or entity (with the portion thereof which is attributable to each individual employee being separately designated).

(C) The employer must be held liable to the State for any amount which such employer fails to withhold from wages due an employee following receipt by such employer of proper notice under subparagraph (A), but such employer shall not be required to vary the normal pay and disbursement cycles in order to comply with this paragraph.

(D) Provision must be made for the imposition of a fine against any employer who discharges from employment, refuses to employ, or takes disciplinary action against any absent parent subject to wage withholding required by this subsection because of the existence of such withholding and the obligations or additional obligations which it imposes upon the employer.

(7) Support collection under this subsection must be given priority over any other legal process under State law against the same wages.

(8) The State may take such actions as may be necessary to extend its system of withholding under this subsection so that such system will include withholding from forms of income other than wages, in order to assure that child support owed by absent parents in the State will be collected without regard to the types of such absent parents' income or the nature of their income-producing activities.

(9) The State must extend its withholding system under this subsection so that such system will include withholding from income derived within such State in cases where the applicable support orders were issued in other States, in order to assure that child support owed by absent parents in such State or any other State will be collected without regard to the residence of the child for whom the support is payable or of such child's custodial parent.

(10) Provision must be made for terminating withholding.

(c) Administration of support payments through State agency or other entity

Any State may at its option, under its plan approved under section 654 of this title, establish procedures under which support payments under this part will be made through the State agency or other entity which administers the State's income withholding system in any case where either the absent parent or the custodial parent requests it, even though no arrearages in child support payments are involved and no income withholding procedures have been instituted; but in any such case an annual fee for handling and processing such payments, in an amount not exceeding the actual costs incurred by the State in counection therewith or $25, whichever is less, shall be imposed on the requesting parent by the State.

(d) Exemption of States

If a State demonstrates to the satisfaction of the Secretary, through the presentation to the Secretary of such data pertaining to caseloads, processing times, administrative costs, and average support collections, and such other data or estimates as the Secretary may specify, that the enactment of any law or the use of any procedure or procedures required by or pursuant to this section will not increase the effectiveness and efficiency of the State child support enforcement program, the Secretary may exempt the State, subject to the Secretary's continuing review and to termination of the exemption should circumstances change, from the requirement to enact the law or use the procedure or procedures involved.

(e) "Overdue support" defined

For purposes of this section, the term "overdue support" means the amount of a delinquency pursuant to an obligation determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a minor child which is owed to or on behalf of such child, or for support and maintenance of the absent parent's spouse (or former spouse) with whom the child is living if and to the extent that spousal support (with respect to such spouse or former spouse) would be included for purposes of paragraph (4) or (6) of section 654 of this title. At the option of the State, overdue support may include amounts which otherwise meet the definition in the first sentence of this subsection but which are owed to or on behalf of a child who is not a minor child. The option to include support owed to children who are not minors shall apply independently to each procedure specified under this section.

(Aug. 14, 1935, ch. 531, title IV, § 466, as added Aug. 16, 1984, Pub. L. 98-378, § 3(b), 98 Stat. 1306, and amended Oct. 21, 1986, Pub. L. 99-509, title IX, § 9193(a), 100 Stat. 1973.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsec. (b)(2), is classified to section 601 et seq. of this title.

AMENDMENTS

1986—Subsec. (a)(9). Pub. L. 99-509 added par. (9).

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9103(b) of Pub. L. 99-509 provided that:

"(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Oct. 21, 1986].

"(2) In the case of a State with respect to which the Secretary of Health and Human Services has determined that State legislation is required in order to conform the State plan approved under part D of title IV of the Social Security Act [42 U.S.C. 651 et seq.] to the requirements imposed by the amendment made by subsection (a) [amending this section], the State plan shall not be regarded as failing to comply with the requirements of such part solely by reason of its failure to meet the requirements imposed by such amendment prior to the beginning of the fourth month beginning after the end of the first session of the State legislature which ends on or after the date of the enactment of this Act [Oct. 21, 1986]. For purposes of the preceding sentence, the term 'session' means a regular, special, budget, or other session of a State legislature."

EFFECTIVE DATE

Section effective Oct. 1, 1985, except that subsec. (e) shall become effective with respect to support owed for any month beginning after Aug. 16, 1984, see section 3(g) of Pub. L. 98-378, set out as an Effective Date of 1984 Amendment note under section 654 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 654 of this title.

§ 667. State guidelines for child support awards

(a) Establishment of guidelines; method

Each State, as a condition for having its State plan approved under this part, must establish guidelines for child support award amounts within the State. The guidelines may be established by law or by judicial or administrative action.

(b) Availability of guidelines; binding nature

The guidelines established pursuant to subsection (a) of this section shall be made available to all judges and other officials who have the power to determine child support awards within such State, but need not be binding upon such judges or other officials.

(c) Technical assistance to States; State to furnish Secretary with copies

The Secretary shall furnish technical assistance to the States for establishing the guidelines, and each State shall furnish the Secretary with copies of its guidelines.

(Aug. 14, 1935, ch. 531, title IV, § 467, as added Aug. 16, 1984, Pub. L. 98-378, § 18(a), 98 Stat. 1321.)

EFFECTIVE DATE

Section 18(b) of Pub. L. 98-378 provided that: "The amendment made by subsection (a) [enacting this section] shall become effective on October 1, 1987."

PART E—FEDERAL PAYMENTS FOR FOSTER CARE AND ADOPTION ASSISTANCE

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 300z-5, 602, 622, 625, 652, 654, 657, 1308, 1396a of this title; title 2 section 906; title 8 section 1255a.

§ 670. Congressional declaration of purpose; authorization of appropriations

For the purpose of enabling each State to provide, in appropriate cases, foster care and transitional independent living programs for children who otherwise would be eligible for assistance under the State's plan approved under part A of this subchapter and adoption assistance for children with special needs, there are authorized to be appropriated for each fiscal year (commencing with the fiscal year which begins October 1, 1980) such sums as may be necessary to carry out the provisions of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans under this part.

(As amended Apr. 7, 1986, Pub. L. 99-272, title XII, § 12307(d), 100 Stat. 297; Oct. 22, 1986, Pub. L. 99-514, title XVII, § 1711(c)(1), 100 Stat. 2784.)

AMENDMENTS

1986—Pub. L. 99-514 substituted "foster care and transitional independent living programs for children who otherwise would be eligible for assistance under the State's plan approved under part A of this subchapter and adoption assistance for children with special needs" for "foster care, adoption assistance, and transitional independent living programs for children who otherwise would be eligible for assistance under the State's plan approved under part A of this subchapter (or, in the case of adoption assistance, would be eligible for benefits under subchapter XVI of this chapter)".

Pub. L. 99-272 substituted "foster care, adoption assistance, and transitional independent living programs" for "foster care and adoption assistance".

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1711(d) of Pub. L. 99-514 provided that: "The amendments made by this section [amending sections 670, 671, 673, and 675 of this title] shall apply only with respect to expenditures made after December 31, 1986."

§ 671. State plan for foster care and adoption assistance

(a) Requisite features of State plan

In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which—

(1) provides for foster care maintenance payments in accordance with section 672 of this title and for adoption assistance in accordance with section 673 of this title;

[*See main edition for text of (2) to (10)*]

(11) provides for periodic review of the standards referred to in the preceding paragraph and amounts paid as foster care maintenance payments and adoption assistance to assure their continuing appropriateness;

[*See main edition for text of (12) to (14)*]

(15) effective October 1, 1983, provides that, in each case, reasonable efforts will be made (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home;

(16) provides for the development of a case plan (as defined in section 675(1) of this title) for each child receiving foster care maintenance payments under the State plan and provides for a case review system which meets the requirements described in section 675(5)(B) of this title with respect to each such child; and

(17) provides that, where appropriate, all steps will be taken, including cooperative efforts with the State agencies administering the plans approved under parts A and D of this subchapter, to secure an assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments under this part.

[*See main edition for text of (b)*]

(As amended Aug. 16, 1984, Pub. L. 98-378, § 11(c), 98 Stat. 1318; Oct. 22, 1986, Pub. L. 99-514, title XVII, § 1711(c)(2), 100 Stat. 2784.)

REFERENCES IN TEXT

Parts A, B, C, and D of this subchapter, referred to in subsec. (a)(2), (4), (8)-(10), (13), and (17), are classified to sections 601 et seq., 620 et seq., 630 et seq., and 651 et seq., respectively, of this title.

AMENDMENTS

1986—Subsec. (a)(1), (11). Pub. L. 99-514 substituted "adoption assistance" for "adoption assistance payments".

1984—Subsec. (a)(17). Pub. L. 98-378 added par. (17).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable only with respect to expenditures made after Dec. 31, 1986, see section 1711(d) of Pub. L. 99-514, set out as a note under section 670 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-378 effective Oct. 1, 1984, and applicable to collections made on or after that date, see section 11(e) of Pub. L. 98-378, set out as a note under section 654 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 652, 658, 664, 666, 672, 677 of this title; title 26 section 6402.

§ 672. Foster care maintenance payments program

(a) Qualifying children

Each State with a plan approved under this part shall make foster care maintenance payments (as defined in section 675(4) of this title) under this part with respect to a child who would meet the requirements of section 606(a) of this title or of section 607 of this title but for his removal from the home of a relative (specified in section 606(a) of this title), if—

[*See main edition for text of (1) to (4)*]

In any case where the child is an alien disqualified under section 1255a(h), 1160(f), or 1161(d)(7) [1] of title 8 from receiving aid under the State plan approved under section 602 of this title in or for the month in which such agreement was entered into or court proceedings leading to the removal of the child from the home were instituted, such child shall be considered to satisfy the requirements of paragraph (4) (and the corresponding requirements of section 673(a)(1)(B) of this title), with respect to that month, if he or she would have satisfied such requirements but for such disqualification.

[*See main edition for text of (b) to (h)*]

(As amended Nov. 6, 1986, Pub. L. 99-603, title II, § 201(b)(2)(A), title III, §§ 302(b)(2), 303(e)(2), 100 Stat. 3403, 3422, 3431.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-603, § 303(e)(2), inserted in closing provisions reference to cases in which a child is an alien disqualified under section 1161(d)(7) of title 8.

[1] So in original. Probably should be "(d)(6)".

Pub. L. 99-603, § 302(b)(2), inserted in closing provisions reference to cases in which a child is an alien disqualified under section 1160(f) of title 8.

Pub. L. 99-603, § 201(b)(2)(A), inserted closing provisions: "In any case where the child is an alien disqualified under section 1255a(h) of title 8 from receiving aid under the State plan approved under section 602 of this title in or for the month in which such agreement was entered into or court proceedings leading to the removal of the child from the home were instituted, such child shall be considered to satisfy the requirements of paragraph (4) (and the corrcsponding requirements of section 673(a)(1)(B) of this title), with respect to that month, if he or she would have satisfied such requirements but for such disqualification."

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Section 102(a)(1) of Pub. L. 96-272, as amended by Pub. L. 98-118, § 3(a), Oct. 11, 1983, 97 Stat. 803; Pub. L. 98-617, § 4(c)(1), Nov. 8, 1984, 98 Stat. 3297; Pub. L. 99-272, title XII, 12306(c)(1), Apr. 7, 1986, 100 Stat. 294, provided in part that the amendment by section 102(a)(1) of Pub. L. 96-272 shall be effective with respect to expenditures made after Sept. 30, 1980, and before Oct. 1, 1987.

Section 102(c) of Pub. L. 96-272, as amended by Pub. L. 98-116, § 3(b), Oct. 11, 1983, 97 Stat. 803; Pub. L. 98-617, § 4(c)(2), Nov. 8, 1984, 98 Stat. 3297; Pub. L. 99-272, title XII, § 12306(c)(2), Apr. 7, 1986, 100 Stat. 294, provided that: "The amendments made by subsections (a) and (b) [amending sections 608, 672, 673, and 675 of this title] shall be effective only with respect to expenditures made after September 30, 1979, and before October 1, 1987; and from and after October 1, 1987, the provisions of law amended by such subsections shall read as they would if this section had not been enacted."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 602, 608, 671, 673, 674, 675, 1396s of this title.

§ 673. Adoption assistance program

(a) Agreements with adoptive parents of children with special needs; State payments; qualifying children; amount of payments; changes in circumstances; placement period prior to adoption; nonrecurring adoption expenses

(1)(A) Each State having a plan approved under this part shall enter into adoption assistance agreements (as defined in section 675(3) of this title) with the adoptive parents of children with special needs.

(B) Under any adoption assistance agreement entered into by a State with parents who adopt a child with special needs, the State—

(i) shall make payments of nonrecurring adoption expenses incurred by or on behalf of such parents in connection with the adoption of such child, directly through the State agency or through another public or nonprofit private agency, in amounts determined under paragraph (3), and

(ii) in any case where the child meets the requirements of paragraph (2), may make adoption assistance payments to such parents, directly through the State agency or through another public or nonprofit private agency, in amounts so determined.

(2) For purposes of paragraph (1)(B)(ii), a child meets the requirements of this paragraph if such child—

(A)(i) at the time adoption proceedings were initiated, met the requirements of section 606(a) of this title or section 607 of this title or would have met such requirements except for his removal from the home of a relative (specified in section 606(a) of this title), either pursuant to a voluntary placement agreement with respect to which Federal payments are provided under section 674 (or 603) of this title or as a result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child, or

(ii) meets all of the requirements of subchapter XVI of this chapter with respect to eligibility for supplemental security income benefits,

(B)(i) received aid under the State plan approved under section 602 of this title in or for the month in which such agreement was entered into or court proceedings leading to the removal of such child from the home were initiated, or

(ii)(I) would have received such aid in or for such month if application had been made therefor, or (II) had been living with a relative specified in section 606(a) of this title within six months prior to the month in which such agreement was entered into or such proceedings were initiated, and would have received such aid in or for such month if in such month he had been living with such a relative and application therefor had been made, or

(iii) is a child described in subparagraph (A)(ii), and

(C) has been determined by the State, pursuant to subsection (c) of this section, to be a child with special needs.

The last sentence of section 672(a) of this title shall apply, for purposes of subparagraph (B), in any case where the child is an alien described in that sentence.

(3) The amount of the payments to be made in any case under clauses (i) and (ii) of paragraph (1)(B) shall be determined through agreement between the adoptive parents and the State or local agency administering the program under this section, which shall take into consideration the circumstances of the adopting parents and the needs of the child being adopted, and may be readjusted periodically, with the concurrence of the adopting parents (which may be specified in the adoption assistance agreement), depending upon changes in such circumstances. However, in no case may the amount of the adoption assistance payment made under clause (ii) of paragraph (1)(B) exceed the foster care maintenance payment which would have been paid during the period if the child with respect to whom the adoption assistance payment is made had been in a foster family home.

(4) Notwithstanding the preceding paragraph, (A) no payment may be made to parents with respect to any child who has attained the age of eighteen (or, where the State determines that the child has a mental or physical handicap which warrants the continuation of assistance, the age of twenty-one), and (B) no payment may be made to parents with respect to any child if the State determines that the par-

ents are no longer legally responsible for the support of the child or if the State determines that the child is no longer receiving any support from such parents. Parents who have been receiving adoption assistance payments under this section shall keep the State or local agency administering the program under this section informed of circumstances which would, pursuant to this subsection, make them ineligible for such assistance payments, or eligible for assistance payments in a different amount.

(5) For purposes of this part, individuals with whom a child (who has been determined by the State, pursuant to subsection (c) of this section, to be a child with special needs) is placed for adoption in accordance with applicable State and local law shall be eligible for such payments, during the period of the placement, on the same terms and subject to the same conditions as if such individuals had adopted such child.

(6)(A) For purposes of paragraph (1)(B)(i), the term "nonrecurring adoption expenses" means reasonable and necessary adoption fees, court costs, attorney fees, and other expenses which are directly related to the legal adoption of a child with special needs and which are not incurred in violation of State or Federal law.

(B) A State's payment of nonrecurring adoption expenses under an adoption assistance agreement shall be treated as an expenditure made for the proper and efficient administration of the State plan for purposes of section 674(a)(3)(B) of this title.

(b) Aid to families with dependent children

For purposes of subchapters XIX and XX of this chapter, any child—

(1)(A) who is a child described in subsection (a)(2) of this section, and

(B) with respect to whom an adoption assistance agreement is in effect under this section (whether or not adoption assistance payments are provided under the agreement or are being made under this section), including any such child who has been placed for adoption in accordance with applicable State and local law (whether or not an interlocutory or other judicial decree of adoption has been issued), or

(2) with respect to whom foster care maintenance payments are being made under section 672 of this title,

shall be deemed to be a dependent child as defined in section 606 of this title and shall be deemed to be a recipient of aid to families with dependent children under part A of this subchapter in the State where such child resides.

(c) Children with special needs

For purposes of this section, a child shall not be considered a child with special needs unless—

(1) the State has determined that the child cannot or should not be returned to the home of his parents; and

(2) the State had first determined (A) that there exists with respect to the child a specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance under this section or medical assistance under subchapter XIX of this chapter, and (B) that, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child, a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance under this section or medical assistance under subchapter XIX of this chapter.

(As amended Apr. 7, 1986, Pub. L. 99-272, title XII, § 12305(a), (b)(1), 100 Stat. 293; Oct. 22, 1986, Pub. L. 99-514, title XVII, § 1711(a), (b), (c)(3)-(5), 100 Stat. 2783, 2784; Nov. 6, 1986, Pub. L. 99-603, title II, § 201(b)(2)(B), 100 Stat. 3403.)

AMENDMENTS

1986—Subsec. (a)(1), (2). Pub. L. 99-603, which directed that par. (1) be amended by inserting "The last sentence of section 672(a) of this title shall apply, for purposes of subparagraph (B), in any case where the child is an alien described in that sentence." at the end thereof (after and below subparagraph (C)), was executed by inserting the quoted language at the end of par. (2) to reflect the probable intent of Congress and the intervening amendment by Pub. L. 99-514, § 1711(a), the result of which was to move such subparagraph (C) from par. (1) to (2).

Pub. L. 99-514, § 1711(a), substituted par. (1) and introductory text of par. (2) for former introductory text of par. (1) which read as follows: "Each State with a plan approved under this part shall, directly through the State agency or through another public or nonprofit private agency, make adoption assistance payments pursuant to an adoption assistance agreement in amounts determined under paragraph (2) of this subsection to parents who, after June 17, 1980, adopt a child who—". Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 99-514, § 1711(a)(1), (c)(3), redesignated par. (2) as (3), substituted "payments to be made in any case under clauses (i) and (ii) of paragraph (1)(B)" for "adoption assistance payments", and inserted "made under clause (ii) of paragraph (1)(B)". Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 99-514, § 1711(a)(1), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 99-514, § 1711(a)(1), (c)(4), redesignated par. (4) as (5) and substituted "in accordance with applicable State and local law shall be eligible for such payments" for ", pursuant to an interlocutory decree, shall be eligible for adoption assistance payments under this subsection".

Subsec. (a)(6). Pub. L. 99-514, § 1711(b), added par. (6).

Subsec. (b). Pub. L. 99-272, § 12305(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "For purposes of subchapters XIX and XX of this chapter, any child with respect to whom adoption assistance payments are made under this section shall be deemed to be a dependent child as defined in section 606 of this title and shall be deemed to be a recipient of aid to families with dependent children under part A of this subchapter."

Subsec. (b)(1)(A). Pub. L. 99-514, § 1711(c)(5), substituted "subsection (a)(2)" for "subsection (a)(1)".

Subsec. (c)(2). Pub. L. 99-272, § 12305(b)(1), substituted "without providing adoption assistance under

this section or medical assistance under subchapter XIX of this chapter" for "without providing adoption assistance", and inserted "or medical assistance under subchapter XIX of this chapter" after "appropriate adoptive parents without providing adoption assistance under this section".

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99-514 applicable only with respect to expenditures made after Dec. 31, 1986, see section 1711(d) of Pub. L. 99-514, set out as a note under section 670 of this title.

Section 12305(c) of Pub. L. 99-272 provided that: "The amendments made by this section [amending sections 673, 675, and 1396a of this title] shall apply to medical assistance furnished in or after the first calendar quarter beginning more than 90 days after the date of the enactment of this Act [Apr. 7, 1986]."

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Amendment by section 102(a)(3) of Pub. L. 96-272 effective only with respect to expenditures made after Sept. 30, 1979, and before Oct. 1, 1987, see section 102(c) of Pub. L. 96-272, as amended, set out as a note under section 672 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 671, 672, 673a, 674, 1396a, 1396s of this title.

§ 674. Payments to States

(a) Amounts

For each quarter beginning after September 30, 1980, each State which has a plan approved under this part (subject to the limitations imposed by subsection (b) of this section) shall be entitled to a payment equal to the sum of—

[*See main edition for text of (1) and (2)*]

(3) an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan—

[*See main edition for text of (A)*]

(B) one-half of the remainder of such expenditures; plus

(4) an amount for transitional independent living programs as provided in section 677 of this title.

(b) Maximum aggregate sums payable to any State; State allotments

(1) Notwithstanding the provisions of subsections (a)(1) and (a)(3) of this section, the aggregate of the sums payable thereunder to any State (other than a State subject to limitation under section 1308(a) of this title) with respect to expenditures relating to foster care, for the calendar quarters in any of the fiscal years 1981 through 1987 in which the conditions set forth in paragraph (2) are met, shall not exceed the State's allotment for such year.

(2)(A) The limitation in paragraph (1) shall apply—

[*See main edition for text of (i)*]

(ii) with respect to fiscal year 1982, only if the amount appropriated under section 620 of this title for such fiscal year is equal to or greater than $220,000,000; and

(iii) with respect to each of the fiscal years 1983 through 1987, only if the amount appropriated under section 620 of this title for such fiscal year is equal to $266,000,000.

(B) The limitations set forth in paragraph (1) with respect to the fiscal years 1982 through 1987 shall apply only if the required appropriation is made in advance in an appropriation Act (as authorized under section 620(b) of this title) for the fiscal year preceding the fiscal year to which the limitation would apply.

[*See main edition for text of (3)*]

(4) For purposes of paragraph (3)(A), a State's allotment shall be determined as follows:

(A) The allotment for any State for fiscal year 1980 shall be an amount equal to such State's base amount (as determined under subparagraph (C)) increased by 21.2 percent.

(B) The allotment for any State for each of the fiscal years 1981 through 1987 shall be an amount equal to such State's allotment for the preceding fiscal year, increased or decreased by a percentage equal to twice the percentage increase or decrease (as the case may be) (but not to exceed an increase or decrease of 10 percent) in the Consumer Price Index prepared by the Department of Labor, and used in determining cost-of-living adjustments under section 415(i) of this title, for the second quarter of the preceding fiscal year as compared to such index for the second quarter of the second preceding fiscal year. For purposes of this subparagraph the Consumer Price Index for any quarter shall be the arithmetical mean of such index for the three months in such quarter.

[*See main edition for text of (C)*]

(5)(A) For purposes of paragraph (3)(C), a State's allotment for any fiscal year ending after September 30, 1980, and before October 1, 1987, may, at the option of the State (and if the State meets the requirements of subparagraphs (B) and (C)), be determined by application of the provisions of paragraph (4) with the following modifications:

[*See main edition for text of (i)*]

(ii) For purposes of clause (i), the percentage determined under such clause shall not exceed 33.1 percent in the case of fiscal year 1981, 46.4 percent in the case of fiscal year 1982, 61.1 percent in the case of fiscal year 1983, or 77.2 percent in the case of each of fiscal years 1984 through 1987.

[*See main edition for text of (B) to (E), (6)*]

(c) Reimbursement for expenditures

(1) Except as provided in paragraphs (3) and (4), for any of the fiscal years 1981 through 1987 during which the limitation under subsection (b)(1) of this section is in effect, sums available to a State from its allotment under subsection (b) of this section for carrying out this part, which the State does not claim as reimbursement for expenditures in such year pur-

suant to subsection (a) of this section, may be claimed by the State as reimbursement for expenditures in such year pursuant to part B of this subchapter, in addition to sums available pursuant to section 620 of this title for carrying out part B of this subchapter.

(2) Except as provided in paragraphs (3) and (4), for any of the fiscal years 1981 through 1987 during which the limitation under subsection (b)(1) of this section is not in effect, a State may claim as reimbursement for expenditures for such year pursuant to part B of this subchapter, in addition to amounts claimed under section 620 of this title an amount equal to the amount by which the State's allotment amount for such fiscal year (as determined under subsection (b)(3) of this section) exceeds the amount claimed by such State for such fiscal year as reimbursement for expenses relating to foster care under subsection (a) of this section; except that the total amount claimed by such State for such fiscal year under this paragraph, when added to the amount that such State receives for such fiscal year under section 620 of this title, may not exceed the amount that would have been payable to such State under section 620 of this title for such fiscal year if the relevant amount described in subsection (b)(2)(A) of this section had been appropriated for such fiscal year.

[*See main edition for text of (3) and (4)*]

(d) Quarterly estimates of State's entitlement for next quarter; payments; United States' pro rata share of amounts recovered as overpayment

(1) The Secretary shall, prior to the beginning of each quarter, estimate the amount to which a State will be entitled under subsections (a), (b), and (c) of this section for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsections, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of children in the State receiving assistance under this part, and (C) such other investigation as the Secretary may find necessary.

[*See main edition for text of (2) and (3)*]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(c)(18), 98 Stat. 1167; Nov. 8, 1984, Pub. L. 98-617, § 4(a), (b), 98 Stat. 3296, 3297; Apr. 7, 1986, Pub. L. 99-272, title XII, §§ 12306(a), (b), 12307(c), 100 Stat. 294, 296; Oct. 22, 1986, Pub. L. 99-514, title XVIII, § 1883(b)(9), 100 Stat. 2917.)

AMENDMENTS

1986—Subsec. (a)(3). Pub. L. 99-272, § 12307(c)(1), substituted "; plus" for period at end of par. (3).

Subsec. (a)(4). Pub. L. 99-514 realigned margins of par. (4).

Pub. L. 99-272, § 12307(c)(2), added par. (4).

Subsec. (b)(1). Pub. L. 99-272, § 12306(a)(1), substituted "1987" for "1985".

Subsec. (b)(2)(A). Pub. L. 99-272, § 12306(a)(2), substituted in cl. (iii) "each of the fiscal years 1983 through 1987" for "fiscal year 1983", and struck out cls. (iv) and (v) relating to limitations with respect to fiscal years 1984 and 1985, respectively, if the appropriation for each of those years is equal to $266,000,000.

Subsec. (b)(2)(B), (4)(B). Pub. L. 99-272, § 12306(a)(1), substituted "1987" for "1985".

Subsec. (b)(5)(A). Pub. L. 99-272, § 12306(a)(3), substituted "October 1, 1987" for "October 1, 1985" in introductory provision, and in cl. (ii) substituted "1984 through 1987" for "1984 and 1985".

Subsec. (c)(1), (2). Pub. L. 99-272, § 12306(b), substituted "1987" for "1985".

1984—Subsec. (b)(1). Pub. L. 98-617, § 4(a)(1), substituted "1985" for "1984" after "1981 through".

Subsec. (b)(2)(A)(v). Pub. L. 98-617, § 4(a)(2), added cl. (v).

Subsec. (b)(2)(B). Pub. L. 98-617, § 4(a)(1), which directed the substitution of "1981 through 1985" for "1981 through 1984" was executed by substituting "1982 through 1985" for "1982 through 1984" as the probable intent of Congress because subpar. (B) did not eontain the phrase "1981 through 1984".

Subsee. (b)(4)(A). Pub. L. 98-369, § 2663(c)(18)(A), substituted "subparagraph (C)" for "subparagraph (c)".

Subsec. (b)(4)(B). Pub. L. 98-617, § 4(a)(1), substituted "1985" for "1984" after "1981 through".

Subsec. (b)(5)(A). Pub. L. 98-617, § 4(a)(3)(A), substituted "October 1, 1985" for "October 1, 1984".

Subsec. (b)(5)(A)(ii). Pub. L. 98-617, § 4(a)(3)(B), substituted "each of fiscal years 1984 and 1085" for "fiscal year 1084".

Subsec. (c)(1), (2). Pub. L. 98-617, § 4(b), substituted "1985" for "1984" after "1981 through".

Pub. L. 98-360, § 2663(c)(18)(B), substituted "relevant" for "relvant".

Subsec. (d)(1). Pub. L. 98-369, § 2663(c)(18)(C), substituted "and (C) sueh" for "and (c) such" and "Secretary may find" for "secretary may find".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-389 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation whieh existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 673, 677 of this title; title 2 section 906.

§ 675. Definitions

As used in this part or part B of this subchapter:

(1) The term "case plan" means a written document which includes at least the following: A description of the type of home or institution in which a child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child in accordance with section 672(a)(1) of this title; and a plan for assuring that the child receives proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own home or the permanent placement of the child, and ad-

dress the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan. Where appropriate, for a child age 16 or over, the case plan must also include a written description of the programs and services which will help such child prepare for the transition from foster care to independent living.

[*See main edition for text of (2)*]

(3) The term "adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the State agency, other relevant agencies, and the prospective adoptive parents of a minor child which at a minimum (A) specifies the nature and amount of any payments, services, and assistance to be provided under such agreement, and (B) stipulates that the agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given time. The agreement shall contain provisions for the protection (under an interstate compact approved by the Secretary or otherwise) of the interests of the child in cases where the adoptive parents and child move to another State while the agreement is effective.

[*See main edition for text of (4) to (6)*]

(As amended Apr. 7, 1986, Pub. L. 99-272, title XII, §§ 12305(b)(2), 12307(b), 100 Stat. 293, 296; Oct. 22, 1986, Pub. L. 99-514, title XVII, § 1711(c)(6), 100 Stat. 2784.)

AMENDMENTS

1986—Par. (1). Pub. L. 99-272, § 12307(b), inserted at end "Where appropriate, for a child age 16 or over, the case plan must also include a written description of the programs and services which will help such child prepare for the transition from foster care to independent living."

Par. (3). Pub. L. 99-514 added cl. (A) and struck out former cl. (A) which read as follows: "specifies the amounts of any adoption assistance payments and any other services and assistance which are to be provided as part of such agreement, and".

Pub. L. 99-272, § 12305(b)(2), substituted in cl. (A) "any adoption assistance payments and any other services and assistance" for "the adoption assistance payments and any additional services and assistance".

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99-514 applicable only with respect to expenditures made after Dec. 31, 1986, see section 1711(d) of Pub. L. 99-514, set out as a note under section 670 of this title.

Amendment by section 12305(b)(2) of Pub. L. 99-272 applicable te medical assistance furnished in or after the first calendar quarter beginning more than 90 days after Apr. 7, 1986, see section 12305(c) of Pub. L. 99-272, set out as a note under section 673 of this title.

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Amendment by section 102(a)(4) of Pub. L. 96-272 effective only with respect to expenditures made after Sept. 30, 1979, and before Oct. 1, 1987, see section 102(c) of Pub. L. 96-272, as amended, set out as a note under section 672 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 625, 627, 671, 672, 673, 677 of this title.

§ 677. Independent living initiatives

(a) Payments for fiscal years 1987 and 1988; purpose; entitlement of States

Payments shall be made in accordance with this section for the purpose of assisting States and localities in establishing and carrying out programs designed to assist children, with respect to whom foster care maintenance payments are being made by the State under this part and who have attained age 16, in making the transition from foster care to independent living. Any State which provides for the establishment and carrying out of one or more such programs in accordance with this section for a fiscal year shall be entitled to receive payments under this section for such fiscal year, in an amount determined under subsection (e) of this section. Such payments shall be made only for the fiscal years 1987 and 1988.

(b) Administration or supervision of programs by State agency; payments to State to conduct and provide activities and services

The State agency administering or supervising the administration of the State's programs under this part shall be responsible for administering or supervising the administration of the State's programs described in subsection (a) of this section. Payment under this section shall be made to the State, and shall be used for the purpose of conducting and providing in accordance with this section (directly or under contracts with local governmental entities or private nonprofit organizations) the activities and services required to carry out the program or programs involved.

(c) Description of program; assurances of effective and efficient operation of program and of compliance; time for submission to Secretary

In order for a State to receive payments under this section for any fiscal year, the State agency must submit to the Secretary, in such manner and form as the Secretary may prescribe, a description of the program together with satisfactory assurances that the program will be operated in an effective and efficient manner and will otherwise meet the requirements of this section. In the case of payments for fiscal year 1987, such description and assurances must be submitted within 90 days after the Secretary promulgates regulations as required under subsection (i) of this section, and in the case of payments for fiscal year 1988, such description and assurances must be submitted prior to January 1, 1988.

(d) Objective of programs; programs to help participating individuals live independently upon leaving foster care; types of programs

In carrying out the purpose described in subsection (a) of this section, it shall be the objective of each program established under this section to help the individuals participating in such program to prepare to live independently upon leaving foster care. Such programs may include (subject to the availability of funds) programs to—

(1) enable participants to seek a high school diploma or its equivalent or to take part in appropriate vocational training;

(2) provide training in daily living skills, budgeting, locating and maintaining housing, and career planning;

(3) provide for individual and group counseling;

(4) integrate and coordinate services otherwise available to participants;

(5) provide for the establishment of outreach programs designed to attract individuals who are eligible to participate in the program;

(6) provide each participant a written transitional independent living plan which shall be based on an assessment of his needs, and which shall be incorporated into his case plan, as described in section 675(1) of this title; and

(7) provide participants with other services and assistance designed to improve their transition to independent living.

(e) Formula for determination of State entitlement for fiscal years 1987 and 1988 for transitional independent living programs; reallocation of amounts to other States; amounts in addition to amounts under other law

(1) The amount to which a State shall be entitled under section 674(a)(4) of this title for each of the fiscal years 1987 and 1988 shall be an amount which bears the same ratio to $45,000,000 as such State's average number of children receiving foster care maintenance payments under this part in fiscal year 1984 bears to the total of the average number of children receiving such payments under this part for all States for fiscal year 1984.

(2) If any State does not apply for funds under this section for any fiscal year within the time provided in subsection (c) of this section, the funds to which such State would have been entitled for such fiscal year shall be reallocated to one or more other States on the basis of their relative need for additional payments under this section (as determined by the Secretary).

(3) Any amounts payable to States under this section shall be in addition to amounts payable to States under subsections (a)(1), (a)(2), and (a)(3) of section 674 of this title, and shall supplement and not replace any other funds which may be available for the same general purposes in the localities involved.

(f) Payments; restrictions; estimation and adjustment; time of expenditure

Payments made to a State under this section for any fiscal year—

(1) shall be used only for the specific purposes described in this section;

(2) may be made on an estimated basis in advance of the determination of the exact amount, with appropriate subsequent adjustments to take account of any error in the estimates; and

(3) shall be expended by such State in such fiscal year or in the succeeding fiscal year.

(g) Report by States to Secretary; evaluation by Secretary and report to Congress

(1) Not later than March 1, 1988, each State shall submit to the Secretary a report on the programs carried out with the amounts received under this section. Such report—

(A) shall be in such form and contain such information as may be necessary to provide an accurate description of such activities, to provide a complete record of the purposes for which the funds were spent, and to indicate the extent to which the expenditure of such funds succeeded in accomplishing the purpose described in subsection (a) of this section; and

(B) shall specifically contain such information as the Secretary may require in order to carry out the evaluation under paragraph (2).

(2) Not later than July 1, 1988, the Secretary, on the basis of the reports submitted by States under paragraph (1) for the fiscal year 1987, and on the basis of such additional information as the Secretary may obtain or develop, shall evaluate the use by States of the payments made available under this section for such fiscal year with respect to the purpose of this section, with the objective of appraising the achievements of the programs for which such payments were made available, and developing comprehensive information and data on the basis of which decisions can be made with respect to the improvement of such programs and the necessity for providing further payments in subsequent years. The Secretary shall report such evaluation to the Congress. As a part of such evaluation, the Secretary shall include, at a minimum, a detailed overall description of the number and characteristics of the individuals served by the programs, the various kinds of activities conducted and services provided and the results achieved, and shall set forth in detail findings and comments with respect to the various State programs and a statement of plans and recommendations for the future.

(h) Payments and services not considered income or resources in determining eligibility for aid and services to needy families with children or for foster care and adoption assistance

Notwithstanding any other provision of this subchapter, payments made and services provided to participants in a program under this section, as a direct consequence of their participation in such program, shall not be considered as income or resources for purposes of determining eligibility (or the eligibility of any other persons) for aid under the State's plan approved under section 602 or 671 of this title, or for purposes of determining the level of such aid.

(i) Promulgation of regulations

The Secretary shall promulgate final regulations for implementing this section within 60 days after April 7, 1986.

(Aug. 14, 1935, ch. 531, title IV, § 477, as added Apr. 7, 1986, Pub. L. 99-272, title XII, § 12307(a), 100 Stat. 294.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 674 of this title.

§ 678. Exclusion from AFDC unit of child for whom foster care maintenance payments are made

Notwithstanding any other provision of this subchapter, a child with respect to whom foster care maintenance payments are made under this part shall not, for the period for which such payments are made, be regarded as a member of a family for purposes of determining the amount of the benefits of the family under part A of this subchapter, and the income and resources of such child shall not be counted as the income and resources of a family under such part.

(Aug. 14, 1935, ch. 531, title IV, § 478, as added Oct. 22, 1986, Pub. L. 99-514, title XVIII, § 1883(b)(10)(A), 100 Stat. 2917.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in text, is classified to section 601 et seq. of this title.

EFFECTIVE DATE

Section 1883(b)(10)(B) of Pub. L. 99-514 provided that: "The amendment made by subparagraph (A) [enacting this section] shall become effective October 1, 1984."

§ 679. Collection of data relating to adoption and foster care

(a) Advisory Committee on Adoption and Foster Care Information

(1) Not later than 90 days after October 21, 1986, the Secretary shall establish an Advisory Committee on Adoption and Foster Care Information (in this section referred to as the "Advisory Committee") to study the various methods of establishing, administering, and financing a system for the collection of data with respect to adoption and foster care in the United States.

(2) The study required by paragraph (1) shall—

(A) identify the types of data necessary to—

(i) assess (on a continuing basis) the incidence, characteristics, and status of adoption and foster care in the United States, and

(ii) develop appropriate national policies with respect to adoption and foster care;

(B) evaluate the feasibility and appropriateness of collecting data with respect to privately arranged adoptions and adoptions arranged through private agencies without assistance from public child welfare agencies;

(C) assess the validity of various methods of collecting data with respect to adoption and fostor care; and

(D) evaluate the financial and administrative impact of implementing each such method.

(3) Not later than October 1, 1987, the Advisory Committee shall submit to the Secretary and the Congress a report setting forth the results of the study required by paragraph (1) and evaluating and making recommendations with respect to the various methods of establishing, administering, and financing a system for the collection of data with respect to adoption and foster carc in the United States.

(4)(A) Subject to subparagraph (B), the membership and organization of the Advisory Committee shall be determined by the Secretary.

(B) The membership of the Advisory Committee shall include representatives of—

(i) private, nonprofit organizations with an interest in child welfare (including organizations that provide foster care and adoption services),

(ii) organizations representing State and local governmental agencies with responsibility for foster care and adoption services,

(iii) organizations representing State and local governmental agencies with responsibility for the collection of health and social statistics,

(iv) organizations representing State and local judicial bodies with jurisdiction over family law,

(v) Federal agencies responsible for the collection of health and social statistics, and

(vi) organizations and agencies involved with privately arranged or international adoptions.

(5) After the date of the submission of the report required by paragraph (3), the Advisory Committee shall cease to exist.

(b) Report to Congress; regulations

(1)(A) Not later than July 1, 1988, the Secretary shall submit to the Congress a report that—

(i) proposes a method of establishing, administering, and financing a system for the collection of data relating to adoption and foster care in the United States,

(ii) evaluates the feasibility and appropriateness of collecting data with respect to privately arranged adoptions and adoptions arranged through private agencies without assistance from public child welfare agencies, and

(iii) evaluates the impact of the system proposed under clause (i) on the agencies with responsibility for implementing it.

(B) The report required by subparagraph (A) shall—

(i) specify any changes in law that will be necessary to implement the system proposed under subparagraph (A)(i), and

(ii) describe the type of system that will be implemented under paragraph (2) in the absence of such changes.

(2) Not later than December 31, 1988, the Secretary shall promulgate final regulations providing for the implementation of—

(A) the system proposed under paragraph (1)(A)(i), or

(B) if the changes in law specified pursuant to paragraph (1)(B)(i) have not been enacted, the system described in paragraph (1)(B)(ii).

Such regulations shall provide for the full implementation of the system not later than October 1, 1991.

(c) Data collection system

Any data collection system developed and implemented under this section shall—

(1) avoid unnecessary diversion of resources from agencies responsible for adoption and foster care;

(2) assure that any data that is collected is reliable and consistent over time and among jurisdictions through the use of uniform definitions and methodologies;

(3) provide comprehensive national information with respect to—

(A) the demographic characteristics of adoptive and foster children and their biological and adoptive or foster parents,

(B) the status of the foster care population (including the number of children in foster care, length of placement, type of placement, availability for adoption, and goals for ending or continuing foster care),

(C) the number and characteristics of—

(i) children placed in or removed from foster care, and

(ii) children adopted or with respect to whom adoptions have been terminated, and

(D) the extent and nature of assistance provided by Federal, State, and local adoption and foster care programs and the characteristics of the children with respect to whom such assistance is provided; and

(4) utilize appropriate requirements and incentives to ensure that the system functions reliably throughout the United States.

(Aug. 14, 1935, ch. 531, title IV, § 479, as added Oct. 21, 1986, Pub. L. 99-509, title IX, § 9443, 100 Stat. 2073.)

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix te Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 679a of this title.

§ 679a. National Adoption Information Clearinghouse

The Secretary of Health and Human Services shall establish, either directly or by grant or contract, a National Adoption Information Clearinghouse. The Clearinghouse shall—

(1) collect, compile, and maintain information obtained from available research, studies, and reports by public and private agencies, institutions, or individuals concerning all aspects of infant adoption and adoption of children with special needs;

(2) compile, maintain, and periodically revise directories of information concerning—

(A) crisis pregnancy centers,

(B) shelters and residences for pregnant women,

(C) training programs on adoption,

(D) educational programs on adoption,

(E) licensed adoption agencies,

(F) State laws relating to adoption,

(G) intercountry adoption, and

(H) any other information relating to adoption for pregnant women, infertile couples, adoptive parents, unmarried individuals who want to adopt children, individuals who have been adopted, birth parents who have placed a child for adoption, adoption agencies, social workers, counselors, or other individuals who work in the adoption field;

(3) disseminate the information compiled and maintained pursuant to paragraph (1) and the directories compiled and maintained pursuant to paragraph (2); and

(4) upon the establishment of an adoption and foster care data collection system pursuant to section 679 of this title, disseminate the data and information made available through that system.

(Pub. L. 99-509, title IX, § 9442, Oct. 21, 1986, 100 Stat. 2073.)

CODIFICATION

Section was enacted as part of the Medicare and Medicaid Budget Reconciliation Amendments of 1985 and also as part of the Omnibus Budget Reconciliation Act of 1986, and not as part of the Social Security Act which comprises this chapter.

SUBCHAPTER V—MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 300w-3, 300x-3, 300z-5, 671, 1301, 1320a-3, 1320a-7a, 1382d, 1396a, 1396n, 1396r-1, 8623 of this title; title 7 section 3178; title 8 section 1255a; title 20 sections 1413, 1481.

§ 701. Authorization of appropriations; purposes; definitions

(a) For the purpose of enabling each State—

[*See main edition for text of (1) to (3)*]

(4) to provide services for locating, and for medical, surgical, corrective, and other services, and care for, and facilities for diagnosis, hospitalization, and aftercare for, children who are "children with special health care needs" or who are suffering from conditions leading to such status;

and for the purpose of enabling the Secretary to provide for special projects of regional and national significance, research, and training with respect to maternal and child health and children with special health care needs, for genetic disease testing, counseling, and information development and dissemination programs, and for grants relating to hemophilia (without regard to age), there are authorized to be appropriated $553,000,000 for fiscal year 1987, $557,000,000 for fiscal year 1988, and $561,000,000 for fiscal year 1989 and each fiscal year thereafter.

(b) For purposes of this subchapter:

(1) The term "consolidated health programs" means the programs administered under the provisions of—

(A) this subchapter (relating to maternal and child health and services for children with special health care needs),

[*See main edition for text of (B) to (D)*]

as such provisions were in effect before August 13, 1981.

[*See main edition for text of (2)*]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2372(a), 98 Stat. 1110; Apr. 7, 1986, Pub. L. 99-272, title IX, § 9527(a)-(c), 100 Stat. 219; Oct. 21, 1986, Pub. L. 99-509, title IX, § 9441(a), 100 Stat. 2071.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-509, in concluding provisions, substituted "$553,000,000 for fiscal year 1987, $557,000,000 for fiscal year 1988, and $581,000,000 for fiscal year 1989" for "$478,000,000 for fiscal year 1984".

Pub. L. 99-272, § 9527(b), in concluding provisions, substituted "children with special health care needs" for "crippled children".

Subsec. (a)(4). Pub. L. 99-272, § 9527(a), substituted "children who are 'children with special health care needs' or who are suffering from conditions leading to such status" for "children who are crippled or who are suffering from conditions leading to crippling".

Subsec. (b)(1)(A). Pub. L. 99-272, § 9527(c), substituted "services for children with special health care needs" for "crippled children's services".

1984—Subsec. (a). Pub. L. 98-369 substituted "$478,000,000 for fiscal year 1984 and each fiscal year thereafter" for "$373,000,000 for fiscal year 1982 and for each fiscal year thereafter".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2372(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending this section] shall be effective for fiscal years beginning on or after October 1, 1983."

§ 702. Allotment to States and Federal set-aside

(a) Special projects

(1) Of the amounts appropriated under section 701(a) of this title for a fiscal year that are not in excess of $478,000,000, the Secretary shall retain an amount equal to 15 percent thereof in the case of fiscal year 1982, and an amount equal to not less than 10, nor more than 15, percent thereof in the case of each fiscal year thereafter, for the purpose of carrying out (through grants, contracts, or otherwise) special projects of regional and national significance, training, and research and for the funding of genetic disease testing, counseling, and information development and dissemination programs and of comprehensive hemophilia diagnostic and treatment centers. The authority of the Secretary to enter into any contracts under this subchapter is effective for any fiscal year only to such extent or in such amounts as are provided in appropriations Acts.

(2) For purposes of paragraph (1)—

[*See main edition for text of (A)*]

(B) amounts retained by the Secretary for research shall be used to make grants to, contracts with, or jointly financed cooperative agreements with, public or nonprofit institutions of higher learning and public or nonprofit private agencies and organizations engaged in research or in maternal and child health or programs for children with special health care needs for research projects relating to maternal and child health services or services for children with special health care needs which show promise of substantial contribution to the advancement thereof.

[*See main edition for text of (3)*]

(b) Allotments to States

From the remaining amounts appropriated under section 701(a) of this title for any fiscal year that are not in excess of $478,000,000, the Secretary shall allot to each State which has transmitted a description of intended activities and statement of assurances for the fiscal year under section 705 of this title, an amount determined as follows:

[*See main edition for text of (1) and (2)*]

(c) Special projects for children

(1) Of the amounts appropriated for a fiscal year in excess of $478,000,000, an amount equal to 7 percent for fiscal year 1987, 8 percent for fiscal year 1988, and 9 percent for fiscal year 1989 shall be retained by the Secretary for the purpose of carrying out (through grants, contracts, or otherwise) projects for the screening of newborns for sickle-cell anemia and other genetic disorders. The provisions of paragraph (3) of subsection (a) of this section shall apply to projects authorized by this paragraph to the same extent as such provisions apply to projects authorized under such subsection.

(2)(A) Of the amounts appropriated for a fiscal year in excess of $478,000,000 that remain after the Secretary has retained the applicable amount (if any) for such fiscal year under paragraph (1), an amount equal to 33⅓ percent shall be retained and allotted in the same manner as the amounts retained and allotted under subsections (a) and (b) of this section.

(B) The amounts retained by the Secretary under this paragraph shall be used for the purpose of carrying out (through grants, contracts, or otherwise) special projects of regional or national significance, training, and research to promote access to primary health services for children and community-based service networks and case management services for children with special health care needs.

(C) The amounts allotted to the States under this paragraph shall be used to develop primary health services demonstration programs and projects for children and to promote the development of community-based service networks and case management services for children with special health care needs.

(D) For purposes of this paragraph—

(i) the term "primary health services" includes—

(I) any assessment, diagnosis, or treatment service provided on an outpatient basis that is designed to promote the health, to prevent the development of disease or disability, or to treat an illness or other health condition, of a child, and

(II) any service designed to promote the access of children to high quality, continuous, and comprehensive primary health services, including case management;

(ii) the term "community-based service network for children with special health care needs" means a network of coordinated, high-quality services that is located in or near the home communities of children with special health care needs in order to improve the health status, functioning, and well-being of such children;

(iii) the term "case management services" means services to promote the effective and efficient organization and utilization of resources to assure access to necessary comprehensive services for children and their families; and

(iv) the term "comprehensive services" includes early identification and intervention services, diagnostic and evaluation services, treatment services, rehabilitation services, family support services, and special education services.

(3) Of the amounts appropriated for a fiscal year in excess of $478,000,000 that remain after the Secretary has retained the applicable amount (if any) for such fiscal year under paragraph (1), an amount equal to 66⅔ percent shall be retained and allotted in the same manner and for the same purposes as the amounts retained and allotted under subsections (a) and (b) of this section.

(d) Re-allotment of unallotted funds

(1) To the extent that all the funds appropriated under this subchapter for a fiscal year are not otherwise allotted to States either because all the States have not qualified for such allotments under section 705 of this title for the fiscal year or because some States have indicated in their descriptions of activities under section 705 of this title that they do not intend to use the full amount of such allotments, such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this paragraph.

(2) To the extent that all the funds appropriated under this subchapter for a fiscal year are not otherwise allotted to States because some State allotments are offset under section 706(b)(2) of this title, such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this paragraph.

(As amended Apr. 7, 1986, Pub. L. 99-272, title IX, § 9527(d), 100 Stat. 219; Oct. 21, 1986, Pub. L. 99-509, title IX, § 9441(b), 100 Stat. 2071.)

AMENDMENTS

1986—Subsec. (a)(1). Pub. L. 99-509, § 9441(b)(1), substituted "amounts appropriated under section 701(a) of this title for a fiscal year that are not in excess of $478,000,000" for "amount appropriated under section 701(a) of this title".

Subsec. (a)(2)(B). Pub. L. 99-272 substituted "programs for children with special health care needs" for "crippled children's programs" and "services for children with special health care needs" for "crippled children's services".

Subsec. (b). Pub. L. 99-509, § 9441(b)(2), inserted "that are not in excess of $478,000,000" in introductory provisions and struck out par. (3) which read as follows:

"(A) To the extent that all the funds appropriated under this subchapter for a fiscal year are not otherwise allotted to States either because all the States have not qualified for such allotments under section 705 of this title for the fiscal year or because some States have indicated in their descriptions of activities under section 705 of this title that they do not intend to use the full amount of such allotments, such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this subparagraph.

"(B) To the extent that all the funds appropriated under this subchapter for a fiscal year are not otherwise allotted to States because some Stato allotments are offset under section 706(b)(2) of this title, such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this subparagraph."

Subsecs. (c), (d). Pub. L. 99-509, § 9441(b)(3), added subsecs. (c) and (d).

§ 703. Payments to States

(a) Statutory provisions applicable

From the sums appropriated therefor and the allotments available under section 702(b) of this title, the Secretary shall make payments as provided by section 6503(a) of title 31 to each State provided such an allotment under section 702(b) of this title, for each quarter, of an amount equal to four-sevenths of the total of the sums expended by the State during such quarter in carrying out the provisions of this subchapter.

[*See main edition for text of (b) and (c)*]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2373(a)(1), 98 Stat. 1111.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369 substituted "section 6503(a) of title 31" for "section 203 of the Intergovernmental Cooperation Act of 1966 (42 U.S.C. 4213)".

§ 704. Use of allotment funds

[*See main edition for text of (a)*]

(b) Restrictions

Amounts described in subsection (a) of this section may not be used for—

(1) inpatient services, other than inpatient services provided to children with special health care needs or to high-risk pregnant women and infants and such other inpatient services as the Secretary may approve;

[*See main edition for text of (2) to (5)*]

The Secretary may waive the limitation contained in paragraph (3) upon the request of a State if the Secretary finds that there are extraordinary circumstances to justify the waiver and that granting the waiver will assist in carrying out this subchapter.

[*See main edition for text of (c)*]

(As amended Apr. 7, 1986, Pub. L. 99-272, title IX, § 9527(e), 100 Stat. 219.)

AMENDMENTS

1986—Subsec. (b)(1). Pub. L. 99-272 substituted "children with special health care needs" for "crippled children".

§ 706. Administrative and fiscal accountability

[*See main edition for text of (a) to (c)*]

(d) Access to books, records, etc.; creation of new records

[*See main edition for text of (1) and (2)*]

(3) For other provisions relating to deposit, accounting, reports, and auditing with respect to Federal grants to States, see section 8503(b) of title 31.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2373(a)(2), 98 Stat. 1111.)

AMENDMENTS

1984—Subsec. (d)(3). Pub. L. 98-369 substituted "section 6503(b) of title 31" for "section 202 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4212)".

§ 709. Administration of Federal and State programs

[*See main edition for text of (a)*]

(b) The State health agency of each State shall be responsible for the administration (or supervision of the administration) of programs carried out with allotments made to the State under this subchapter, except that, in the case of a State which on July 1, 1967, provided for administration (or supervision thereof) of the State plan under this subchapter (as in effect on such date) by a State agency other than the State health agency, that State shall be considered to comply [1] the requirement of this subsection if it would otherwise comply but for the fact that such other State agency administers (or supervises the administration of) any such program providing services for children with special health care needs.

(As amended Apr. 7, 1986, Pub. L. 99-272, title IX, § 9527(e), 100 Stat. 219.)

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-272 substituted "children with special health care needs" for "crippled children".

SUBCHAPTER VII—ADMINISTRATION

§ 902. Duties of Secretary of Health and Human Services

The Secretary [2] shall perform the duties imposed upon him by this chapter and shall also have the duty of studying and making recommendations as to the most effective methods of providing economic security through social insurance, and as to legislation and matters of administrative policy concerning old-age pensions, unemployment compensation, accident compensation, and related subjects.

(Aug. 14, 1935, ch. 531, title VII, § 702, 49 Stat. 636; Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(c), (d), 64 Stat. 558; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(j)(2)(C)(i), (*l*)(1), 98 Stat. 1170, 1171.)

AMENDMENTS

1984—Pub. L. 98-369, § 2663(*l*)(1), substituted "Secretary" for "Administrator".

Pub. L. 98-369, § 2663(j)(2)(C)(i), which directed the substitution of "Health and Human Services" for "Health, Education, and Welfare", could not be executed because "Health, Education, and Welfare" did not appear in text.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

TRANSFER OF FUNCTIONS

Reorganization Plan No. 2 of 1949 (eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065) transferred to the Secretary of Labor certain duties and functions of the Federal Security Administrator (now the Secretary of Health and Human Services), with respect to employment services, unemployment compensation, and the Bureau of Employment Security (which also was transferred to the Department of Labor from the Federal Security Agency). Reorganization Plan No. 19 of 1950 (eff. May 24, 1950, 15 F.R. 8178, 64 Stat. 1271) transferred the Bureau of Employees' Compensation from the Federal Security Agency (now the Department of Health and Human Services) to the Department of Labor and provided for the transfer from the Federal Security Administrator to the Secretary of Labor of certain functions and duties with respect to the Bureau of Employees' Compensation and with respect to employees' compensation, including workmen's compensation. In effect, with respect to these functions and duties, the provisions of this section also apply to the Secretary of Labor.

STUDY CONCERNING THE ESTABLISHMENT OF THE SOCIAL SECURITY ADMINISTRATION AS AN INDEPENDENT AGENCY

Pub. L. 96-21, title III, § 338, Apr. 20, 1983, 97 Stat. 132, as amended by Pub. L. 98-369, div. B, title VI, § 2662(h)(1), July 16, 1984, 98 Stat. 1160, provided that:

"(a) There is hereby established, under the authority of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, a joint study panel to be known as the Joint Study Panel on the Social Security Administration (hereafter in this section referred to as the 'Panel'). The duties of the Panel shall be to conduct the study provided for in subsection (c).

"(b)(1) The Panel shall be composed of 3 members, appointed jointly by the chairmen of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate and such chairmen shall jointly select one member of the Panel to serve as chairman of the Panel. Members of the Panel shall be chosen, on the basis of their integrity, impartiality, and good judgment, from individuals

[1] So in original. Probably should be "comply with".

[2] See Transfer of Functions note below.

who, as a result of their training, experience, and attainments, are widely recognized by professionals in the fields of government administration, social insurance, and labor relations as experts in those fields.

"(2) Vacancies in the membership of the Panel shall not affect the power of the remaining members to perform the duties of the Panel and shall be filled in the same manner in which the original appointment was made.

"(3) Each member of the Panel not otherwise in the employ of the United States Government shall receive the daily equivalent of the annual rate of basic pay payable for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day during which such member is actually engaged in the performance of the duties of the Panel. Each membor of the Panel shall be allowed travel expenses in the same manner as any individual employed intermittently by the Federal Government is allowed travel expenses under section 5703 of title 5, United States Code.

"(4) By agreement between the chairmen of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, such Committees shall provide the Panel, on a reimbursible basis, office space, clerical personnel, and such supplies and equipment as may be necessary for the Panel to carry out its duties under this section. Subject to such limitations as the chairmen of such Committees may jointly prescribe, the Panel may appoint such additional personnel as the Panel considers necessary and fix the compensation of such personnel as it considers appropriate at an annual rate which does not exceed the rate of basic pay then payable for GS-18 of the General Schedule under section 5332 of title 5, United States Code, and may procure by contract the temporary or intermittent services of clerical personnel and experts or consultants, or organizations thereof.

"(5) There are hereby authorized to be appropriated to the Panel, from amounts in the general fund of the Treasury not otherwise appropriated, such sums as are necessary to carry out the purposes of this section.

"(6) The provisions of section 8344 of title 5, United States Code, shall not apply to service by an individual as a member of the Panel.

"(c)(1) The Panel shall undertake, as soon as possible after the date of the enactment of this Act [Apr. 20, 1983], a thorough study with respect to the implementation of removing the Social Security Administration from the Department of Health and Human Services and establishing it as an independent agency in the executive branch with its own independent administrative structure, including the possibility of such a structure headed by a board appointed by the President, by and with the advice and consent of the Senate.

"(2) The Panel in its study under paragraph (1) shall address, analyze, and report specifically on the following matters:

"(A) the manner in which the transition to an independent agency would be conducted;

"(B) the authorities which would have to be transferred or amended in such a transition;

"(C) the program or programs which would be included within the jurisdiction of the new agency;

"(D) the legal and other relationships of the Social Security Administration with other organizations which would be required as a result of establishing the Social Security Administration as an independent agency; and

"(E) any other details which may be necessary for the development of appropriate legislation to establish the Social Security Administration as an independent agency.

"(d) The Panel shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, not later than April 1, 1984, a report of the findings of the study conducted under subsection (c), together with any recommendations the Panel considers appropriate. The Panel and all authority granted in this section shall expire thirty days after the date of the submission of its report under this section."

[Section 2662(h)(2) of Pub. L. 98-369 provided that: "The amendment made by this subsection [amending this note] shall take effect on January 1, 1984."]

EARNINGS SHARING IMPLEMENTATION REPORT

Pub. L. 98-21, title III, § 343, Apr. 20, 1983, 97 Stat. 136, provided that:

"(a) The Secretary of Health and Human Services (hereinafter in this section referred to as the 'Secretary') shall develop, in consultation with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, proposals for earnings sharing legislation as described in subsection (b). The Secretary shall report such proposals to such committees not later than July 1, 1984. The report and proposals provided to such committees shall—

"(1) take into account, discuss, and analyze the impact of earnings sharing on various categories of social security beneficiaries and include recommendations for the implementation of earnings sharing which may be necessary to provide adequate protection for particular classes of beneficiaries;

"(2) include specific recommendations with respect te an appropriate and feasible time period or time periods for implementation of such proposals along with recommendations for any transition provisions which may be necessary or appropriate; and

"(3) provide cost-impact analyses on each proposal presented.

"(b) For the purposes of subsection (a), the term 'earnings sharing' refers to proposals that the combined earnings of a husband and wife during the period of their marriage shall be divided equally and shared between them for social security benefit purposes.

"(c) In preparing the report and proposals required in subsection (a), the Secretary shall include consideration and analysis of the earnings sharing proposals contained in (1) S. 3, 96th Congress, 1st Session, (2) H.R. 1513, 97th Congress, 1st Session, and (3) the earnings sharing option described in the report entitled 'Social Security and the Changing Roles of Men and Women', submitted to the Congress pursuant to Public Law 95-216, the Social Security Amendments of 1977.

"(d) In carrying out subsections (a), (b), and (c), the Secretary shall consult with the Director of the Congressional Budget Office. Not later than 30 days after the Secretary submits the report required in subsection (a), the Director of the Congressional Budget Office shall submit a report to the committees identified in such subsection on the methodologies, recommendations, and analyses used in the Secretary's report."

§ 903. Expenses of Secretary; appointment and compensation of officers and employees

The Secretary is authorized to appoint and fix the compensation of such officers and employees, and to make such expenditures, as may be necessary for carrying out his functions under this chapter. Appointments of attorneys and experts may be made without regard to the civil-service laws.

(Aug. 14, 1935, ch. 531, title VII, § 703, 49 Stat. 636; Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(c), (d), 64 Stat. 558; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(*l*)(1), 98 Stat. 1171.)

AMENDMENTS

1984—Pub. L. 98-369 substituted "Secretary" for "Administrator".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 904. Annual report to Congress

The Secretary shall make a full report to Congress, within one hundred and twenty days after the beginning of each regular session, of the administration of the functions with which he is charged under this chapter. In addition to the number of copies of such report authorized by other law to be printed, there is hereby authorized to be printed not more than five thousand copies of such report for use by the Secretary for distribution to Members of Congress and to State and other public or private agencies or organizations participating in or concerned with the social security program.

(Aug. 14, 1935, ch. 531, title VII, § 704, 49 Stat. 636; Aug. 28, 1950, ch. 809, title IV, § 402(b), 64 Stat. 558; Apr. 21, 1976, Pub. L. 94-273, § 33, 90 Stat. 380; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(*l*)(1), 98 Stat. 1171.)

AMENDMENTS

1984—Pub. L. 98-369 substituted "Secretary" for "Administrator".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 405, 1310, 1383 of this title.

§ 907. Advisory Council on Social Security

(a) Initial and quinquennial appointment; review of status of Funds, scope of coverage, adequacy of benefits, impact on public assistance, and other program aspects

During 1969 (but not before February 1, 1969) and every fourth year thereafter (but not before February 1 of such fourth year), except as provided in subsection (e) of this section, the Secretary shall appoint an Advisory Council on Social Security for the purpose of reviewing the status of the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund in relation to the long-term commitments of the old-age, survivors, and disability insurance program and the programs under parts A and B of subchapter XVIII of this chapter, and of reviewing the scope of coverage and the adequacy of benefits under, and all other aspects of, these programs, including their impact on the public assistance programs under this chapter.

[*See main edition for text of* (b)]

(c) Technical assistance; actuarial services; availability of assistance and data; compensation and travel expenses

(1) Any Council appointed hereunder is authorized to engage such technical assistance, including actuarial services, as may be required to carry out its functions, and the Secretary shall, in addition, make available to such Council such secretarial, clerical, and other assistance and such actuarial and other pertinent data prepared by the Department of Health and Human Services as it may require to carry out such functions.

[*See main edition for text of* (2)]

(d) Reports to Congress; termination of Council

Each such Council shall submit reports (including any interim reports such Council may have issued) of its findings and recommendations to the Secretary not later than January 1 of the second year after the year in which it is appointed, and such reports and recommendations shall thereupon be transmitted to the Congress and to the Board of Trustees of each of the Trust Funds. The reports required by this subsection shall include—

(1) a separate report with respect to the old-age, survivors, and disability insurance program under subchapter II of this chapter and of the taxes imposed under sections 1401(a), 3101(a), and 3111(a) of the Internal Revenue Code of 1986,

(2) a separate report with respect to the hospital insurance program under part A of subchapter XVIII of this chapter and of the taxes imposed by sections 1401(b), 3101(b), and 3111(b) of the Internal Revenue Code of 1986, and

[*See main edition for text of* (3)]

After the date of the transmittal to the Congress of the reports required by this subsection, the Council shall cease to exist.

(e) Appointment of Council in 1985 or subsequent years prior to 1989

No Advisory Council on Social Security shall be appointed under subsection (a) of this section in 1985 (or in any subsequent year prior to 1989).

(Aug. 14, 1935, ch. 531, title VII, § 706, as added July 30, 1965, Pub. L. 89-97, title I, § 109(a), 79 Stat. 339, and amended Jan. 2, 1968, Pub. L. 90-248, title I, § 165, title IV, § 403(d), 81 Stat. 874, 932; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(j)(2)(C)(ii), 98 Stat. 1170; Apr. 7, 1986, Pub. L. 99-272, title XII, § 12102(g)(1), 100 Stat. 285; Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095.)

REFERENCES IN TEXT

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

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-272, § 12102(g)(1)(A), inserted "except as provided in subsection (e) of this section," before "the Secretary shall appoint".

Subsec. (d)(1), (2). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (e). Pub. L. 99-272, § 12102(g)(1)(B), added subsec. (e).

1984—Subsec. (c)(1). Pub. L. 98-369 substituted "Health and Human Services" for "Health, Education, and Welfare".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 effective on the first day of the month following April 1986, see section 12115 of Pub. L. 99-272, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

DISABILITY ADVISORY COUNCIL; APPOINTMENT, MEMBERSHIP, DUTIES, ETC.

Section 12102(a)-(f) of Pub. L. 99-272 required appointment by the Secretary of Health and Human Services of a special Disability Advisory Council, provided for the membership of the Council, required the Council to conduct studies and make recommendations on the medical and vocational aspects of disability under both subchapters II (42 U.S.C. 401 et seq.) and XVI (42 U.S.C. 1381 et seq.) of this chapter, provided for technical assistance to the Council and for the compensation of its members, required the Council to submit a report and recommendations to the Secretary of Health and Human Services not later than Dec. 31, 1986, with such report and recommendations to thereupon be transmitted to Congress and the Board of Trustees of the Federal Disability Insurance Trust Fund, and provided for the Council to terminate after the date of the transmittal of the report to Congress.

APPOINTMENT OF MEMBERS; STUDY OF MEDICAL AND VOCATIONAL ASPECTS OF DISABILITY; DEFINITION; TASK FORCES

Pub. L. 98-460, § 12, Oct. 9, 1984, 98 Stat. 1806, which provided for the appointment of an Advisory Council on Social Security pursuant to this section prior to June 1, 1985, for the purpose of submitting a review and report with studies and recommendations on the medical and vocational aspects of disability, and authorized the Council to convene task forces of experts to consider and comment upon specialized issues, was repealed by Pub. L. 99-272, title XII, § 12102(g)(2), Apr. 7, 1986, 100 Stat. 285.

§ 907a. National Commission on Social Security

[See main edition for text of (a) to (h)]

(i) Repealed. Pub. L. 98-369, div. B, title III, § 2349(b)(3), July 18, 1984, 98 Stat. 1097

(As amended Pub. L. 98-369, div. B, title III, § 2349(b)(3), July 18, 1984, 98 Stat. 1097.)

AMENDMENTS

1984—Subsec. (i). Pub. L. 98-369 struck out subsec. (i) which provided for notice of and attendance at meetings of the Health Insurance Benefits Advisory Council.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2349(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 907a and 1395z of this title and section 231f of Title 45, Railroads, and repealing section 1395dd of this title] shall become effective on the date of the enactment of this Act [July 18, 1984]."

§ 909. Delivery of benefit checks

[See main edition for text of (a) and (b)]

(c) Early delivery

For purposes of computing the "OASDI trust fund ratio" under section 401(*l*) of this title, the "OASDI fund ratio" under section 415(i) of this title, and the "balance ratio" under section 910(b) of this title, benefit checks delivered before the end of the month for which they are issued by reason of subsection (a) of this section shall be deemed to have been delivered on the regularly designated delivery date.

(As amended Apr. 7, 1986, Pub. L. 99-272, title XII, § 12111(a), 100 Stat. 287.)

AMENDMENTS

1986—Subsec. (c). Pub. L. 99-272 added subsec. (c).

EFFECTIVE DATE OF 1986 AMENDMENT

Section 12111(c) of Pub. L. 99-272 provided that: "The amendments made by this section [amending this section and section 86 of Title 26, Internal Revenue Code] shall apply with respect to benefit checks issued for months ending after the dato of the enactment of this Act [Apr. 7, 1986]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 86.

§ 910. Recommendations by Board of Trustees to remedy inadequate balances in the Social Security trust funds

(a) Terms and conditions of recommendations

If the Board of Trustees of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, or the Federal Supplementary Medical Insurance Trust Fund determines at any time that the balance ratio of any such Trust Fund for any calendar year may become less than 20 percent, the Board shall promptly submit to each House of the Congress a report setting forth its recommendations for statutory adjustments affecting the receipts and disbursements of such Trust Fund necessary to maintain the balance ratio of such Trust Fund at not less than 20 percent, with due regard to the economic conditions which created such inadequacy in the balance ratio and the amount of time necessary to alleviate such inadequacy in a prudent manner. The report shall set forth specifically the extent to which benefits would have to be reduced, taxes under section 1401, 3101, or 3111 of the Internal Revenue Code of 1986 would have to be increased, or a combination thereof, in order to obtain the objectives referred to in the preceding sentence.

(b) "Balance ratio" defined

For purposes of this section, the term "balance ratio" means, with respect to any calendar year in connection with any Trust Fund referred to in subsection (a) of this section, the ratio of—

(1) the balance in such Trust Fund as of the beginning of such year, including the taxes transferred under section 401(a) of this title on the first day of such year and reduced by the outstanding amount of any loan (including interest thereon) theretofore made to such Trust Fund under section 401(*l*) or 1395i(j) of this title, to

(2) the total amount which (as estimated by the Secretary) will be paid from such Trust Fund during such calendar year for all purposes authorized by section 401, 1395i, or 1395t of this title (as applicable), other than payments of interest on, or repayments of, loans under section 401(*l*) or 1395i(j) of this title, but excluding any transfer payments between such Trust Fund and any other Trust Fund referred to in subsection (a) of this section and reducing the amount of any transfers to the Railroad Retirement Account by the amount of any transfers into such Trust Fund from that Account.

(Aug. 14, 1935, ch. 531, title VII, § 709, as added Apr. 20, 1983, Pub. L. 98-21, title I, § 143, 97 Stat. 102, and amended Apr. 7, 1986, Pub. L. 99-272, title XII, § 12106, 100 Stat. 286; Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095.)

REFERENCES IN TEXT

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

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (b)(1). Pub. L. 99-272 amended par. (1) generally. Prior to amendment, par. (1) read as follows: "the balance in such Trust Fund, reduced by the outstanding amount of any loan (including interest thereon) theretofore made to such Trust Fund under section 401(*l*) or 1395i(j) of this title, as of the beginning of such year, to".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 effective on the first day of the month following April 1986, see section 12115 of Pub. L. 99-272, set out as a note under section 415 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 909 of this title.

§ 911. Budgetary treatment of trust fund operations

(a) Federal Old-Age and Survivors Insurance Trust Fund; Federal Disability Insurance Trust Fund

The receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, and the taxes imposed under sections 1401(a), 3101(a), and 3111(a) of the Internal Revenue Code of 1986, shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

(b) Federal Hospital Insurance Trust Fund; Federal Supplementary Medical Insurance Trust Fund

The disbursements of the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund shall be treated as a separate major functional category in the budget of the United States Government as submitted by the President and in the congressional budget, and the receipts of such Trust Funds, including the taxes imposed under sections 1401(b), 3101(b), and 3111(b) of the Internal Revenue Code of 1986, shall be set forth separately in such budgets.

(c) Payments between general fund of Treasury and trust funds prohibited

No provision of law enacted after December 12, 1985 (other than a provision of an appropriation Act that appropriates funds authorized under this chapter as in effect on December 12, 1985) may provide for payments from the general fund of the Treasury to the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, or for payments from either such Trust Fund to the general fund of the Treasury.

(Aug. 14, 1935, ch. 531, title VII, § 710, as added Apr. 20, 1983, Pub. L. 98-21, title III, § 346(a)(1), 97 Stat. 137, and amended Dec. 12, 1985, Pub. L. 99-177, title II, § 261(a)(1), 99 Stat. 1093; Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095.)

AMENDMENT OF SECTION

Pub. L. 98-21, title III, § 346(b), Apr. 20, 1983, 97 Stat. 138, as amended by Pub. L. 99-177, title II, § 261(b), Dec. 12, 1985, 99 Stat. 1094; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that effective for fiscal years beginning on or after Oct. 1, 1992, this section is amended to read as follows:

(a)(1) The receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund and the taxes imposed under sections 1401, 3101, and 3111 of the Internal Revenue Code of 1986 shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

(2) No provision of law enacted after December 12, 1985 (other than a provision of an appropriation Act that appropriates funds authorized under this chapter as in effect on December 12, 1985) may provide for payments from the general fund of the Treasury to any Trust Fund specified in paragraph (1) or for payments from any such Trust Fund to the general fund of the Treasury.

(b) The disbursements of the Federal Supplementary Medical Insurance Trust Fund shall be

treated as a separate major functional category in the budget of the United States Government as submitted by the President and in the congressional budget, and the receipts of such Trust Fund shall be set forth separately in such budgets.

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (a) and (b), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1986—Subsecs. (a), (b). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1985—Subsec. (a). Pub. L. 99-177, § 261(a)(1)(E), temporarily added subsec. (a). See Effective and Termination Dates of 1985 Amendment note below.

Subsec. (b). Pub. L. 99-177, § 261(a)(1)(A)-(D), temporarily designated existing provisions as subsec. (b), struck out references to the Federal Old-Age and Survivors Insurance Trust Fund and to the Federal Disability Insurance Trust Fund, and substituted "sections 1401(b), 3101(b), and 3111(b) of the Internal Revenue Code of 1954" for "sections 1401, 3101, and 3111 of the Internal Revenue Code of 1954". See Effective and Termination Dates of 1985 Amendment note below.

Subsec. (c). Pub. L. 99-177, § 261(a)(1)(F), temporarily added subsec. (c). See Effective and Termination Dates of 1985 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENT

Section 261(a)(2) of Pub. L. 99-177 provided that: "The amendments made by paragraph (1) [amending this section] shall apply with respect to fiscal years beginning after September 30, 1985, and ending before October 1, 1992."

EFFECTIVE AND TERMINATION DATES

Section 346(a)(2) of Pub. L. 98-21 provided that: "The amendment made by paragraph (1) [enacting this section] shall apply with respect to fiscal years beginning on or after October 1, 1984, and ending on or before September 30, 1992, except that such amendment shall apply with respect to the fiscal year beginning on October 1, 1983, to the extent it relates to the congressional budget."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 622.

SUBCHAPTER IX—EMPLOYMENT SECURITY ADMINISTRATIVE FINANCING

§ 1101. Employment Security Administration Account

[*See main edition for text of (a) and (b)*]

(c) Administrative expenditures; necessary expenses; quarterly transfer of funds; adjustments; limitation; estimate of net receipts

[*See main edition for text of (1) and (2)*]

(3) [*See main edition for text of (A) and (B)*]

(C) Each estimate of net receipts under this paragraph shall be based upon (i) a tax rate of 0.6 percent in the case of any calendar year for which the rate of tax under section 3301 of the Federal Unemployment Tax Act [26 U.S.C. 3301] is 6.0 percent, and (ii) a tax rate of 0.8 percent in the case of any calendar year for which the rate of tax under such section is 6.2 percent.

[*See main edition for text of (4); (d) to (f)*]

(Aug. 14, 1935, ch. 531, title IX, § 901, as added Aug. 5, 1954, ch. 657, § 2, 68 Stat. 668, and amended Sept. 13, 1960, Pub. L. 86-778, title V, § 521, 74 Stat. 970; May 8, 1961, Pub. L. 87-31, § 7, 75 Stat. 78; May 29, 1963, Pub. L. 88-31, § 1, 77 Stat. 51; Aug. 7, 1989, Pub. L. 91-53, § 3, 83 Stat. 93; Aug. 10, 1970, Pub. L. 91-373, title III, § 303, 84 Stat. 713; Apr. 2I, 1976, Pub. L. 94-273, § 39, 90 Stat. 381; Oct. 20, 1976, Pub. L. 94-566, title II, § 211(e)(1) [(c)(1)], 90 Stat. 2676; Sept. 3, 1982, Pub. L. 97-248, title II, § 271(b)(2)(A), (c)(3)(D), 96 Stat. 554, 555; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(d)(1), (2), 98 Stat. 1187.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369, § 2663(d)(1), realigned margins of subsec. (c).

Subsec. (f). Pub. L. 98-369, § 2663(d)(2), realigned margins of par. (3).

1982—Subsec. (c)(3)(C). Pub. L. 97-248, § 271(c)(3)(D), substituted "0.8" for "0.5", "6.0" for "3.2", and "6.2" for "3.5".

Subsec. (c)(3)(C)(ii). Pub. L. 97-248, § 271(b)(2)(A), substituted "0.8" for "0.7", struck out "3301" after "tax under such section", and substituted "3.5" for "3.4".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2864(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 271(b)(2)(A) of Pub. L. 97-248 applicable to remuneration paid after Dec. 31, 1982, see section 271(d)(1) of Pub. L. 97-248, as amended, set out as a note under section 3301 of Title 26, Internal Revenue Code.

Amendment by section 271(c)(3)(D) of Pub. L. 97-248 applicable to remuneration paid after Dec. 31, 1984, see section 271(d)(2) of Pub. L. 97-248, as amended, set out as a note under section 3301 of Title 26.

§ 1104. Unemployment Trust Fund

[*See main edition for text of (a)*]

(b) Investments

It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-bearing obligations of the United

States then forming part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Obligations other than such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition. Advances made to the Federal unemployment account pursuant to section 1323 of this title shall not be invested.

[*See main edition for text of (c) to (g)*]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(d)(3), 98 Stat. 1167.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369 substituted "chapter 31 of title 31" for "the Second Liberty Bond Act, as amended".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 503, 1105, 1109, 1322 of this title; title 2 section 906; title 5 section 8509; title 26 sections 3304, 3366; title 45 sections 360, 361, 363a, 366a.

§ 1108. Federal Advisory Council

[*See main edition for text of (a) to (c)*]

(d) Compensation

Members of the Council shall, while serving on business of the Council, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, including travel time; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in government service employed intermittently.

[*See main edition for text of (e) and (f)*]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(d)(4), 98 Stat. 1167.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-369 substituted "5703" for "5703(b)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 1109. Federal Employees Compensation Account

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 906; title 5 section 8509.

SUBCHAPTER X—GRANTS TO STATES FOR AID TO THE BLIND

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 428, 602, 671, 1301, 1306a, 1308, 1309, 1311, 1315, 1316, 1318, 1319, 1320b-2, 1320b-3, 1320b-7, 1382, 1382c, 1395v, 1396a, 1396b, 1396d of this title; title 7 sections 2012, 2014; title 8 section 1255a; title 26 section 6103; title 29 section 802.

§ 1202. State plans for aid to blind

(a) A State plan for aid to the blind must (1) except to the extent permitted by the Secretary with respect to services, provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide (A) for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to the blind is denied or is not acted upon with reasonable promptness, and (B) that if the State plan is administered in each of the political subdivisions of the State by a local agency and such local agency provides a hearing at which evidence may be presented prior to a hearing before the State agency, such local agency may put into effect immediately upon issuance its decision upon the matter considered at such hearing; (5) provide (A) such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low-income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; (6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; and [1]

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

(7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 302 of this title or aid to families with dependent children under the State plan approved under section 602 of this title; (8) provide that the State agency shall, in determining need, take into consideration any other income and resources of the individual claiming aid to the blind, as well as any expenses reasonably attributable to the earning of any such income, except that, in making such determination, the State agency (A) shall disregard the first $85 per month of earned income, plus one-half of earned income in excess of $85 per month, (B) shall, for a period not in excess of twelve months, and may, for a period not in excess of thirty-six months, disregard such additional amounts of other income and resources, in the case of an individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, and (C) may, before disregarding the amounts referred to in clauses (A) and (B), disregard not more than $7.50 of any income; (9) provide safeguards which permit the use or disclosure of information concerning applicants or recipients only (A) te public officials who require such information in connection with their official duties, or (B) to other persons for purposes directly connected with the administration of the State plan; (I0) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (11) effective July 1, 1951, provide that all individuals wishing to make application for aid to the blind shall have opportunity to do so, and that aid to the blind shall be furnished with reasonable promptness to all eligible individuals; (12) effective July 1, 1953, provide, If the plan includes payments to individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; (13) provide a description of the services (If any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for and recipients of aid to the blind to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services; and (14) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b-7 of this title.

[*See main edition for text of* (*b*)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2651(f), 98 Stat. 1149.)

AMENDMENTS

1984—Subsec. (a)(14). Pub. L. 98-369 added cl. (14).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(*l*)(2) of Pub. L. 98-369, set out as an Effective Date note under section 1320b-7 of this title.

§ 1203. Payment to States

(a) Authorization of payments

From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the blind, for each quarter, beginning with the quarter commencing October 1, 1958—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) in the case of any State, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health and Human Services for the proper and efficient administration of the State plan—

[*See main edition for text of* (*A*)]

(B) 100 percent of so much of such expenditures as are for the costs of the implementation and operation of the immigration status verification system described in section 1320b-7(d) of this title; plus

(C) one-half of the remainder of such expenditures.

[*See main edition for text of* (*b*)]

(As amended Nov. 6, 1986, Pub. L. 99-603, title I, § 121(b)(4), 100 Stat. 3391.)

AMENDMENTS

1986—Subsec. (a)(3)(B), (C). Pub. L. 99-603 added subpar. (B) and redesignated former subpar. (B) as (C).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-603 effective Oct. 1, 1987, see section 121(c)(2) of Pub. L. 99-603, set out as a note under section 502 of this title.

SUBCHAPTER XI—GENERAL PROVISIONS AND PEER REVIEW

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 432, 1395x, 3012 of this title.

PART A—GENERAL PROVISIONS

§ 1301. Definitions

(a) When used in this chapter—

[*See main edition for text of* (*1*) *to* (*5*)]

(6) The term "Secretary", except when the context otherwise requires, means the Secretary of Health and Human Services.

[*See main edition for text of* (*7*)]

(8) [*See main edition for text of* (*A*)]

(B) The Federal percentage for each State (other than Puerto Rico, the Virgin Islands, and Guam) shall be promulgated by the Secretary between October 1 and November 30 of

each year, on the basis of the average per capita income of each State and of the United States for the three most recent calendar years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the four quarters in the period beginning October 1 next succeeding such promulgation: *Provided*, That the Secretary shall promulgate such percentages as soon as possible after August 28, 1958, which promulgation shall be conclusive for each of the eleven quarters in the period beginning October 1, 1958, and ending with the close of June 30, 1981.

[*See main edition for text of (C) and (D)*]

(9) The term "shared health facility" means any arrangement whereby—

[*See main edition for text of (A) to (D)*]

except that such term does not include a provider of services (as defined in section 1395x(u) of this title), a health maintenanee organization (as defined in section 300e(a) of this title), a hospital cooperative shared services organization meeting the requirements of section 501(e) of the Internal Revenue Code of 1986, or any public entity.

[*See main edition for text of (b) to (d)*]

(Aug. 14, 1935, ch. 531, title XI, § 1101, 49 Stat. 647; Aug. 10, 1939, ch. 666, title VIII, § 801, 53 Stat. 1398; Aug. 10, 1946, ch. 951, title IV, § 401(a), 60 Stat. 986; June 14, 1948, ch. 468, § 2(a), 62 Stat. 438; Aug. 28, 1950, ch. 809, title IV, § 403(a)(1), (2), (b), 64 Stat. 559; Aug. 16, 1956, ch. 836, title III, § 333, 70 Stat. 852; Aug. 28, 1958, Pub. L. 85-840, title V, §§ 505, 506, 72 Stat. 1050, 1051; June 25, 1959, Pub. L. 86-70, § 32(a), (d), 73 Stat. 149; July 12, 1960, Pub. L. 86-624, § 30(a), (d), 74 Stat. 419, 420; Sept. 13, 1960, Pub. L. 86-778, title V, § 541, 74 Stat. 985; July 25, 1962, Pub. L. 87-543, title I, § 153, 76 Stat. 206; July 30, 1965, Pub. L. 89-97, title I, § 121(c)(1), 79 Stat. 352; Oct. 30, 1972, Pub. L. 92-603, title II, § 272(a), 86 Stat. 1451; Dec. 31, 1973, Pub. L. 93-233, § 18(z-2)(1)(A), 87 Stat. 973; Apr. 21, 1976, Pub. L. 94-273, § 22, 90 Stat. 379; Oct. 20, 1976, Pub. L. 94-566, title I, § 116(a), 90 Stat. 2672; Oct. 25, 1977, Pub. L. 95-142, § 5(c)(2), (*l*)(2), 91 Stat. 1184, 1191; Aug. 13, 1981, Pub. L. 97-35, title XXI, §§ 2162(a)(1), 2193(c)(2), title XXIII, § 2352(b), 95 Stat. 806, 827, 871; Sept. 3, 1982, Pub. L. 97-248, title I, §§ 136(a), 160(c), 96 Stat. 375, 400; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(e)(1), (j)(1), 98 Stat. 1167, 1170; Apr. 7, 1986, Pub. L. 99-272, title IX, § 9528(a), 100 Stat. 219; Oct. 22, 1986, Pub. L. 99-514, § 2, title XVIII, §§ 1883(c)(1), 1895(c)(6), 100 Stat. 2095, 2918, 2936.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (a)(9), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1986—Subsec. (a)(3) to (5). Pub. L. 99-514, § 1883(c)(1), realigned margins of pars. (3) to (5).

Subsec. (a)(8)(B). Pub. L. 99-514, § 1895(c)(6), amended directory language of Pub. L. 99-272, § 9528(a), and did not involve any change in text. See note below.

Pub. L. 99-272, § 9528(a), as amended by Pub. L. 99-514, § 1895(c)(6), struck out "even-numbered" after "November 30 of each" and substituted "for each of the four quarters" for "for each of the eight quarters".

Subsec. (a)(9). Pub. L. 99-514, § 2, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" in closing provisions.

1984—Subsec. (a)(6). Pub. L. 98-369, § 2663(j)(1), substituted "means the Secretary of Health and Human Services" for "means the Secretary of Health, Education, and Welfare".

Subsec. (a)(8), (9). Pub. L. 98-369, § 2663(e)(1), realigned margins of pars. (8) and (9).

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1883(c)(1) of Pub. L. 99-514 effective Oct. 22, 1986, see section 1883(f) of Pub. L. 99-514, set out as a note under section 402 of this title.

Amendment by section 1895(c)(6) of 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.

Section 9528(b), (c) of Pub. L. 99-272, as amended by Pub. L. 99-509, title IX, §§ 9102, 9421(a), Oct. 21, 1986, 100 Stat. 1972, 2065, provided that:

"(b) EFFECTIVE DATE.—The amendments made by this section [amending this section] shall apply to the Federal percentage (and Federal medical assistance percentage) for fiscal years 1987 and thereafter. Such amendments shall apply without regard to the requirement of section 1101(a)(8)(B) of the Social Security Act [42 U.S.C. 1301(a)(8)(B)] relating to the promulgation of the Federal percentage prior to November 30 of the year preceding the year in which the new Federal percentage becomes applicable. The Secretary of Health and Human Services shall promulgate such new percentage for fiscal year 1987 as soon as practicable after the date of the enactment of this Act [Apr. 7, 1986].

"(c) HOLD HARMLESS PROVISION.—Notwithstanding subsection (b), for calendar quarters occurring during fiscal year 1987 and only for purposes of making payments to States under sections 403 and 1903 of the Social Security Act [42 U.S.C. 603, 1396b], the amendments made by subsection (a) [amending this section] shall not apply to a State with respect to either such section if the effect of the [sic] applying the amendments would be to reduce the amount of payment made to the State under that section."

[Section 9102 of Pub. L. 99-509 provided in part that amendment by section 9102 of Pub. L. 99-509 to this note is effective as provided in section 9421(b) of Pub. L. 99-509. See below.]

[Section 9421(b) of Pub. L. 99-509 provided that: "The amendment made by subsection (a) [amending this note] shall be effective as though it had been included in the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99-272] at the time of its enactment."]

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

PROVISIONS RELATING TO FEDERAL SECURITY ADMINISTRATOR

Section 2663(*l*) of Pub. L. 98-369 provided that: "Any reference to the Federal Security Administrator which may remain in the provisions of title II, IV, VII, or XI of the Social Security Act [42 U.S.C. 401 et seq., 601 et seq., 901 et seq., 1301 et seq.] (other than section 1101(a)(6) of such Act [42 U.S.C. 1301(a)(6)]) is amended—

"(1) by substituting 'Secretary' or 'Secretary's' for the term 'Administrator' or 'Administrater's', where the reference is to that term alone;

"(2) by substituting 'Secretary of Health, Education, and Welfare' for the term 'Federal Security Administrator', where the reference is to that term, if the provision containing such reference is amended by paragraph (2) or (3) of subsection (j) [Pub. L. 98-369, § 2663(j)(2), (3), see Tables for classification] (in which case the amendment of such provision under this paragraph shall be deemed te have taken effect immediately prior to the amendment of such provision under such paragraph (2) or (3)); and

"(3) by substituting 'Secretary of Health and Human Services' for the term 'Federal Security Administrator' in any other case where the reference is to that term;

and any reference to the Federal Security Agency which may remain in such provisions is amended by substituting 'Department of Health and Human Services' for the term 'Federal Security Agency'; but nothing in this subsection shall affect the exercise under section 402(a)(5) of such Act [42 U.S.C. 602(a)(5)] of the functions, powers, and duties relating to the prescription of personnel standards on a merit basis which were transferred from the Secretary of Health, Education, and Welfare by section 208(a)(3)(D) of Public Law 91-648 [42 U.S.C. 4728(a)(3)(D)]."

§ 1302. Rules and regulations

The Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, respectively, shall make and publish such rules and regulations, not inconsistent with this chapter, as may be necessary to the efficient administration of the functions with which each is charged under this chapter.

(Aug. 14, 1935, ch. 531, title XI, § 1102, 49 Stat. 647; Aug. 28, 1950, ch. 809, title IV, § 403(c), 64 Stat. 559; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(j)(2)(D)(i), (*l*)(2), 98 Stat. 1170, 1171.)

AMENDMENTS

1984—Pub. L. 98-369, § 2663(*l*)(2), substituted "Secretary of Health, Education, and Welfare" for "Federal Security Administrator" immediately prior to the substitution of "Health and Human Services" for "Health, Education, and Welfare" by Pub. L. 98-369, § 2663(j)(2)(D)(i).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

NOTICE ON SOCIAL SECURITY CHECKS

Pub. L. 98-473, title II, § 1212, Oct. 12, 1984, 98 Stat. 2165, provided that:

"(a) The Secretary of the Treasury shall take such steps as may be necessary to provide that all checks issued for payment of benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.], and the envelopes in which such checks are mailed, contain a printed notice that the commission of forgery in conjunction with the cashing or attempted cashing of such checks constitutes a violation of Federal law. Such notice shall also state the maximum penalties for forgery under the applicable provisions of title 18 of the United States Code.

"(b) Subsection (a) shall apply with respect to checks issued for months after the ninth month after the date of the enactment of this Act [Oct. 12, 1984]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1395ff of this title.

§ 1303. Separability of provisions

SEPARABILITY OF PROVISIONS

Pub. L. 98-460, § 18, Oct. 9, 1984, 98 Stat. 1813, provided that: "If any provision of this Act [amending sections 405, 408, 416, 421 to 423, 1382c, 1382d, 1382h, and 1383 te 1383b of this title, enacting provisions set out as notes under sections 405, 421 to 423, 907, and 1305 of this title, and amending provisions set out as a note under section 1382h of this title], or the application thereof to any person or circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby."

§ 1305. Short title of chapter

SHORT TITLE OF 1986 AMENDMENTS

Pub. L. 99-643, § 1, Nov. 10, 1986, 100 Stat. 3574, provided that: "This Act [amending sections 1382, 1382c, 1382h, 1383, 1383c, 1396a, and 1396s of this title, enacting provisions set out as notes under sections 1382, 1382h, 1383, 1383c, and 1396a of this title, and amending provisions set out as a note under section 1382h of this title] may be cited as the 'Employment Opportunities for Disabled Americans Act'."

Pub. L. 99-272, title IX, § 9000, Apr. 7, 1986, 100 Stat. 151, provided that: "This title [enacting sections 1320c-13, 1395w-1, 1395dd, 1396r, and 1396s of this title, amending sections 401, 701, 702, 704, 709, 1301, 1320a-2, 1320c-2, 1320c-3, 1395e, 1395f, 1395i, 1395i-2, 1395*l*, 1395p to 1395r, 1395t, 1395u, 1395x, 1395y, 1395cc, 1395mm, 1395ww, 1395yy, 1396a, 1396b, 1396d, 1396k, 1396n, and 1396o of this title and sections 623, 631, and 1144 of Title 29, Labor, enacting provisions set out as notes under sections 401, 1301, 1320a-2, 1320c-2, 1320c-3, 1320c-13, 1395b, 1395b-1, 1395e, 1395h, 1395i-2, 1395*l*, 1395p, 1395r, 1395u, 1395x, 1395y, 1395cc, 1395dd, 1395mm, 1395rr, 1395ww, 1395yy, 1396a, 1396b, 1396d, 1396n, and 1396r of this title and section 1144 of Title 29, and amending provisions set out as notes under sections 1395c, 1395h, 1395y, and 1395ww of this title] may be cited as the 'Medicare and Medicaid Budget Reconciliation Amendments of 1985'."

SHORT TITLE OF 1984 AMENDMENTS

Pub. L. 98-460, § 1, Oct. 9, 1984, 98 Stat. 1794, provided that: "This Act [amending sections 405, 406, 416, 421 to 423, 1382c, 1382d, 1382h, and 1383 to 1383b of this title, enacting provisions set out as notes under sections 405, 421 to 423, 907, and 1303 of this title, and amending provisions set out as a note under section 1382h of this title] may be cited as the 'Social Security Disability Benefits Reform Act of 1984'."

Pub. L. 98-378, § 1, Aug. 16, 1984, 98 Stat. 1305, provided that: "This Act [enacting sections 666 and 667 of this title, amending sections 602, 603, 606, 651 to 658, 664, 671, 1315, and 1396a of this title and sections 6103, 6402, and 7213 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under sections 602, 606, 652, 654, 657, 658, and 667 of this title and section 6103 of Title 26] may be cited as the 'Child Support Enforcement Amendments of 1984'."

Pub. L. 98-369, div. B, title III, § 2300, July 18, 1984, 98 Stat. 1061, provided that: "This title [enacting sections 1317, 1395yy, 1395zz, and 1396q of this title, amending sections 2911, 300s-1a, 606, 701, 703, 706, 907a, 1308, 1310, 1316, 1320a-1, 1320a-7 to 1320a-8, 1320c-2, 1395b-I, 1395f, 1395h, 1395i, 1395i-2, 1395k, 1395*l*, 1395n, 1395p to 1395cc, 1395ff, 1395il, 1395*ll*, 1395mm to 1395oo, 1395rr, 1395ww, 1396a, 1396b, 1396d, 1396k, 1396*l*, and 1396n of this title, section 5315 of Title 5, Government Organization and Employees, section 162 of Title 26, Internal Revenue Code, section 623 of Title 29, Labor, and section 231f of Title 45, Railroads, repealing section 1395dd of this title, enacting provisions set out as notes under sections 2911, 701, 907a, 1308, 1310, 1317, 1320a-1, 1320a-7, 1320c-2, 1395b-I, 1395f, 1395h, 1395i, 1395k, 1395*l*, 1395n, 1395p, 1395r, 1395u, 1395x, 1395y, 1395bb, 1395cc, 1395mm, 1395oo, 1395rr, 1395uu, 1395ww, 1395yy, 1396a, 1396b, 1396d, 1396*l*, and 1396q of this title and section 623 of Title 29, and amending provisions set out as notes under sections 1320c, 1395x, 1395mm, and 1395ww of this title] may be cited as the 'Medicare and Medicaid Budget Reconciliation Amendments of 1984'."

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 98-21, § 1, Apr. 20, 1983, 97 Stat. 65, provided in part that Pub. L. 98-21 [enacting sections 910 and 911 of this title and sections 86, 3510, and 6050F of Title 26, Internal Revenue Code, amending sections 401, 402, 403, 405, 407, 409, 410, 411, 415, 416, 417, 418, 422, 423, 425, 426, 427, 428, 429, 430, 433, 503, 602, 659, 1320a-1, 1320c-2, 1322, 1382, 1382a, 1382f, 1382g, 1395f, 1395i, 1395i-2, 1395n, 1395r, 1395t, 1395v, 1395w, 1395x, 1395y, 1395cc, 1395mm, 1395oo, 1395rr, 1395ww, and 1395xx of this title, section 3413 of Title 12, Banks and Banking, and sections 37, 41, 43, 44A, 46, 53, 85, 86, 87, 105, 128, 164, 275, 401, 403, 406, 407, 415, 861, 871, 904, 1401, 1402, 1441, 3101, 3111, 3121, 3302, 3304, 3306, 6103, 6413, and 7871 of Title 26, and enacting provisions set out as notes under sections 401, 402, 403, 405, 407, 410, 411, 414, 415, 416, 418, 426, 428, 429, 433, 602, 902, 911, 1382, 1395b-1, 1395i, 1395r, 1395x, 1395y, 1395cc, and 1395ww of this title, sections 37, 86, 406, 1401, 1402, 3101, 3121, 3302, 3303, 3304, 3306, and 3510 of Title 26, section 3023 of Title 38, Veterans' Benefits, and section 231n of Title 45, Railroads] may be cited as the "Social Security Amendments of 1983".

§ 1306. Disclosure of information in possession of Department of Health and Human Services

(a) Disclosure prohibited; exceptions

No disclosure of any return or portion of a return (including information returns and other written statements) filed with the Commissioner of Internal Revenue under title VIII of the Social Security Act [42 U.S.C. 1001 et seq.] or under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code [of 1939], or under regulations made under authority thereof, which has been transmitted to the Secretary [1] by the Commissioner of Internal Revenue, or of any file, record, report, or other paper, or any information, obtained at any time by the Secretary or by any officer or employee of the Department of Health and Human Services in the course of discharging the duties of the Secretary under this chapter, and no disclosure of any such file, record, report, or other paper, or information, obtained at any time by any person from the Secretary or from any officer or employee of the Department of Health and Human Services shall be made except as the Secretary may by regulations prescribe and except as otherwise provided by Federal law. Any person who shall violate any provision of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

(b) Requests for information and services

Requests for information, disclosure of which is authorized by regulations prescribed pursuant to subsection (a) of this section, and requests for services, may, subject to such limitations as may be prescribed by the Secretary [1] to avoid undue interference with his functions under this chapter, be complied with if the agency, person, or organization making the request agrees to pay for the information or services requested in such amount, if any (not exceeding the cost of furnishing the information or services), as may be determined by the Secretary. Payments for information or services furnished pursuant to this section shall be made in advance or by way of reimbursement, as may be requested by the Secretary, and shall be deposited in the Treasury as a special deposit to be used to reimburse the appropriations (including authorizations to make expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund) for the unit or units of the Department of Health and Human Services which furnished the information or services. Notwithstanding the preceding provisions of this subsection, requests for information made pursuant to the provisions of part D of subchapter IV of this chapter for the purpose of using Federal records for locating parents shall be complied with and the cost incurred in providing such information shall be paid for as provided in such part D of subchapter IV of this chapter.

[*See main edition for text of* (c) *to* (e)]

(Aug. 14, 1935, ch. 531, title XI, § 1106, as added Aug. 10, 1939, ch. 666, title VIII, § 802, 53 Stat. 1398, and amended Aug. 28, 1950, ch. 809, title IV, § 403(d), 64 Stat. 559; Aug. 28, 1958, Pub. L. 85-840, title VII, § 701, 72 Stat. 1055; July 30, 1965, Pub. L. 89-97, title I, § 108(c), title III, § 340, 79 Stat. 339, 411; Jan. 2, 1968, Pub. L. 90-248, title I, § 168, title II, § 241(c)(1), 81 Stat. 875, 917; Oct. 30, 1972, Pub. L. 92-603, title II, § 249C(a), 86 Stat. 1428; Jan. 4, 1975, Pub. L. 93-647, § 101(d), 88 Stat. 2360; Aug. 13, 1981, Pub. L. 97-35, title XXII, § 2207, 95 Stat. 838; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(j)(2)(D)(ii), (*l*), 98 Stat. 1170, 1171.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 2663(*l*), substituted "Secretary" and "Department of Health and Human Services" for "Administrator" and "Federal Security Agency", respectively, wherever appearing.

Subsec. (b). Pub. L. 98-369, § 2663(j)(2)(D)(ii), substituted "Health and Human Services" for "Health, Education, and Welfare".

[1] See Transfer of Functions note below.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

TRANSFER OF FUNCTIONS

Reorganization Plan No. 2 of 1949 (eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065) transferred to the Secretary of Labor certain duties and functions of the Federal Security Administrater (now the Secretary of Health and Human Services), with respect to employment services, unemployment compensation, and the Bureau of Employment Security (which was also transferred to the Department of Labor from the Federal Security Agency). Reorganization Plan No. 19 of 1950 (eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271) transferred the Bureau of Employees' Compensation from the Federal Security Agency (now the Department of Health and Human Services) to the Department of Labor and provided for the transfer from the Federal Security Administrator to the Secretary of Labor of certain functions and duties with respect to the Bureau of Employees' Compensation and with respect to employees' compensation, including workmen's compensation. In effect, with respect to these functions and duties, the provisions of this section also apply to the Secretary of Labor.

§ 1307. Penalty for fraud

(a) Whoever, with the intent to defraud any person, shall make or cause to be made any false representation concerning the requirements of this chapter, of chapter 2, 21, or 23 of the Internal Revenue Code of 1986, or of any provision of subtitle F of such Code which corresponds (within the meaning of section 7852(b) of such Code) to a provision contained in subchapter E of chapter 9 of the Internal Revenue Code of 1939, or of any rules or regulations issued thereunder, knowing such representations to be false, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

(b) Whoever, with the intent to elicit information as to the date of birth, employment, wages, or benefits of any individual (1) falsely represents to the Secretary that he is such individual, or the wife, husband, widow, widower, divorced wife, divorced husband, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father, child, or parent of such individual, or the duly authorized agent of such individual, or of the wife, husband, widow, widower, divorced wife, divorced husband, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father, child, or parent of such individual, or (2) falsely represents to any person that he is an employee or agent of the United States, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

(Aug. 14, 1935, ch. 531, title XI, § 1107, as added Aug. 10, 1939, ch. 666, title VIII, § 802, 53 Stat. 1398, and amended Aug. 28, 1950, ch. 809, title IV, § 403(e), (f), 64 Stat. 560; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(e)(2)(A), (3), (j)(2)(D)(iii), (l)(1), 98 Stat. 1168, 1170, 1171; Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095.)

REFERENCES IN TEXT

Subchapter E of chapter 9 of the Internal Revenue Code of 1939, referred te in subsec. (a), was comprised of sections 1631 to 1636 of the 1939 Code, and was repealed (subject to certain exceptions) by section 7851(a)(1)(A), (3) of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1986 Code, see section 7852(b) of the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1984—Subsec. (a). Pub. L. 98-369, § 2663(e)(2)(A), substituted "of chapter 2, 21, or 23 of the Internal Revenue Code of 1954, or of any provision of subtitle F of such Code which corresponds (within the meaning of section 7852(b) of such Code) to a provision contained in subchapter E of chapter 9 of the Internal Revenue Code of 1939," for "subchapter E of chapter 1 or subchapter A, C, or E of chapter 9 of the Internal Revenue Code [of 1939]".

Subsec. (b). Pub. L. 98-369, § 2663(l)(1), substituted "Secretary" for "Administrator".

Pub. L. 98-369, § 2663(j)(2)(D)(iii), which directed the substitution of "Health and Human Services" for "Health, Education, and Welfare" could not be executed because "Health, Education, and Welfare" did not appear in text.

Pub. L. 98-369, § 2663(e)(3), substituted "divorced wife, divorced husband, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father," for "former wife divorced," in two places.

EFFECTIVE DATE OF 1984 AMENDMENT

Section § 2663(e)(2)(B) of Pub. L. 98-369 provided that: "The amendment made by subparagraph (A) [amending subsec. (a) of this section] shall not apply to returns filed or representations made on or before the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2663(e)(3), (j)(2)(D)(iii), (l)(1), of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 1308. Limitation on payments to Puerto Rico, Virgin Islands, Guam, Northern Mariana Islands, American Samoa, and Trust Territory of Pacific Islands

[*See main edition for text of* (a) *and* (b)]

(c) Total amount certified under subcbapter XIX

The total amount certified by the Secretary under subchapter XIX of this chapter with respect to a fiscal year for payment to—

(1) Puerto Rico shall not exceed $63,400,000;

(2) the Virgin Islands shall not exceed $2,100,000;

(3) Guam shall not exceed $2,000,000;

(4) the Northern Mariana Islands shall not exceed $550,000; and

(5) American Samoa shall not exceed $1,150,000.

[*See main edition for text of (d)*]

(Aug. 14, 1935, ch. 531, title XI, § 1106, as added Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(g), 64 Stat. 558, and amended Aug. 1, 1956, ch. 836, title III, § 351(c), 70 Stat. 855; Aug. 28, 1958, Pub. L. 85-840, title V, §§ 507, 508, 72 Stat. 1051; Sept. 13, 1960, Pub. L. 86-778, title VI, § 602, 74 Stat. 992; May 8, 1961, Pub. L. 87-31, § 6(a)(1), (2), (b), 75 Stat. 78; June 30, 1961, Pub. L. 87-64, title III, § 303(d), 75 Stat. 143; July 25, 1962, Pub. L. 87-543, title I, § 151, 76 Stat. 206; July 30, 1965, Pub. L. 89-97, title II, § 206(a)(2), title IV, § 408(a), 79 Stat. 355, 422; Jan. 2, 1968, Pub. L. 90-248, title II, § 248(a)(1), 81 Stat. 918; Oct. 30, 1972, Pub. L. 92-603, title II, §§ 271(a), (b), 272(b), 86 Stat. 1451; Jan. 4, 1975, Pub. L. 93-647, § 3(i), 86 Stat. 2350; Nov. 6, 1978, Pub. L. 95-600, title VIII, § 802(b), 92 Stat. 2945; June 17, 1980, Pub. L. 96-272, title II, § 207(c), title III, §§ 305(a), (b), 94 Stat. 526, 529, 530; Aug. 13, 1981, Pub. L. 97-35, title XXI, §§ 2162(b)(1), 2193(c)(1), title XXIII, § 2353(f), 95 Stat. 806, 827, 872; Sept. 3, 1982, Pub. L. 97-248, title I, §§ 136(b), 160(a), 96 Stat. 375, 400; July 18, 1984, Pub. L. 98-369, div. B, title III, § 2365(a), 98 Stat. 1108.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369 substituted "$83,400,000" for "$45,000,000" in par. (1), "$2,100,000" for "$1,500,000" in par. (2), "$2,000,000" for "$1,400,000" in par. (3), "$550,000" for "$350,000" in par. (4), and "$1,150,000" for "$750,000" in par. (5).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2365(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending subsec. (c) of this section] shall be effective for fiscal years beginning on or after October 1, 1983."

§ 1310. Cooperative research or demonstration projects

(a)(1) There are hereby authorized to be appropriated for the fiscal year ending June 30, 1957, $5,000,000 and for each fiscal year thereafter such sums as the Congress may determine for (A) making grants to States and public and other organizations and agencies for paying part of the cost of research or demonstration projects such as those relating to the prevention and reduction of dependency, or which will aid in effecting coordination of planning between private and public welfare agencies or which will help improve the administration and effectiveness of programs carried on or assisted under this chapter and programs related thereto, and (B) making contracts or jointly financed cooperative arrangements with States and public and other organizations and agencies for the conduct of research or demonstration projects relating to such matters.

[*See main edition for text of (2) and (3)*]

(b) [*See main edition for text of (1) and (2)*]

(3) All reports of the Secretary with respect to projects carried out under this subsection shall be incorporated into the Secretary's annual report to the Congress required by section 904 of this title.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2331(a), 98 Stat. 1088; Apr. 7, 1986, Pub. L. 99-272, title XII, § 12101(d), 100 Stat. 283.)

AMENDMENTS

1986—Subsec. (b)(3). Pub. L. 99-272 added par. (3).

1984—Subsec. (a)(1)(A). Pub. L. 98-389 struck out "nonprofit" before first reference to "organizations and agencies".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 effective on the first day of the month following April 1988, see section 12115 of Pub. L. 99-272, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2331(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 1310 and 1395b-1 of this title] shall become effective on the date of the enactment of this Act [July 18, 1984]."

FINAL REPORT COVERING ALL EXPERIMENTS AND DEMONSTRATION PROJECTS

Section 505(c) of Pub. L. 96-265, as amended by Pub. L. 99-272, title XII, § 12101(c), Apr. 7, 1986, 100 Stat. 283, provided that: "The Secretary shall submit to the Congress a final report with respect to all experiments and demonstration projects carried out under subsection (a) [amending section 401 of this title and enacting provisions set out as a note below] no later than June 9, 1990."

AUTHORITY FOR DEMONSTRATION PROJECTS; REPORT TO CONGRESS

Section 505(a)(1)-(4) of Pub. L. 96-265, as amended by Pub. L. 99-272, title XII, § 12101(a), (b), Apr. 7, 1986, 100 Stat. 282, provided that:

[*See main edition for text of (1) and (2)*]

"(3) In the case of any experiment or demonstration project under paragraph (1) which is initiated before June 10, 1990, the Secretary may waive compliance with the benefit requirements of titles II and XVIII of the Social Security Act [subchapters II and XVIII of this chapter] insofar as is necessary for a thorough evaluation of the alternative methods under consideration. No such experiment or project shall be actually placed in operation unless at least ninety days prior thereto a written report, prepared for purposes of notification and information only and containing a full and complete description thereof, has been transmitted by the Secretary to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate. Periodic reports on the progress of such experiments and demonstration projects shall be submitted by the Secretary to such committees. When appropriate, such reports shall include detailed recommendations for changes in administration or law, or both, to carry out the objectives stated in paragraph (1).

"(4) On or before June 9 in each of the years 1986, 1987, 1988, and 1989, the Secretary shall submit to the Congress an interim report on the progress of the experiments and demonstration projects carried out under this subsection together with any related data and materials which the Secretary may consider appropriate."

§ 1314. Public advisory groups

[*See main edition for text of (a) and (b)*]

(c) Technical and other assistance for initial Council; availability of data

The Council is authorized to engage such technical assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Council such secretarial, clerical, and other assistance and such pertinent data prepared by the Department of Health and Human Services as it may require to carry out such functions.

[*See main edition for text of (d) to (f)*]

(g) Compensation and travel expenses

Members of the Council or of any advisory committee appointed under this section who are not regular full-time employees of the United States shall, while serving on business of the Council or any such committee, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $75 per day, including travel time; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in Government service employed intermittently.

(h) Exemption from conflict of interest laws of members of Council or advisory committees; exceptions

(1) Any member of the Council or any advisory committee appointed under this chapter, who is not a regular full-time employee of the United States, is hereby exempted, with respect to such appointment, from the operation of sections 203, 205, and 209 of title 18, except as otherwise specified in paragraph (2) of this subsection.

[*See main edition for text of (2)*]

(Aug. 14, 1935, ch. 531, title XI, § 1114, as added July 25, 1962, Pub. L. 87-543, title I, § 121, 76 Stat. 190, and amended Jan. 2, 1968, Pub. L. 90-248, title IV, § 403(e), 81 Stat. 932; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(e)(4), (j)(2)(D)(iv), 98 Stat. 1168, 1170.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369, § 2663(j)(2)(D)(iv), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (g). Pub. L. 98-369, § 2663(e)(4)(A), made technical correction of typographical error resulting in no change in text.

Subsec. (h)(1). Pub. L. 98-369, § 2663(e)(4)(B), substituted "sections 203, 205, and 209 of title 18" for "sections 281, 283, and 1914 of title 18 and section 190 of the Revised Statutes (5 U.S.C. 99)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 1315. Demonstration projects

(a) Waiver of State plan requirements; costs regarded as State plan expenditures; availability of appropriations

In the case of any experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives of subchapter I, X, XIV, XVI, or XIX of this chapter, or part A or D of subchapter IV of this chapter, in a State or States—

(1) the Secretary may waive compliance with any of the requirements of section 302, 602, 654, 1202, 1352, 1382, or 1396a of this title, as the case may be, to the extent and for the period he finds necessary to enable such State or States to carry out such project, and

(2) costs of such project which would not otherwise be included as expenditures under section 303, 603, 655, 1203, 1353, 1383, or 1396b of this title, as the case may be, and which are not included as part of the costs of projects under section 1310 of this title, shall, to the extent and for the period prescribed by the Secretary, be regarded as expenditures under the State plan or plans approved under such subchapter, or for administration of such State plan or plans, as may be appropriate.

In addition, not to exceed $4,000,000 of the aggregate amount appropriated for payments to States under such subchapters for any fiscal year beginning after June 30, 1967, shall be available, under such terms and conditions as the Secretary may establish, for payments to States to cover so much of the cost of such projects as is not covered by payments under such subchapters and is not included as part of the cost of projects for purposes of section 1310 of this title.

(b) Purposes, criteria and procedures applicable to establishment; participatory effect; duration and termination

[*See main edition for text of (1)*]

(2) Any State which establishes and conducts demonstration projects under this subsection may, subject to paragraph (3), with respect to any such project—

(A) waive, subject to paragraph (3), any or all of the requirements of sections 602(a)(1) of this title (relating to statewide operation), 602(a)(3) of this title (relating to administration by a single State agency), 602(a)(8) of this title (relating to disregard of earned income), except that no such waiver of 602(a)(8) of this title shall operate to waive any amount in excess of one-half of the earned income of any individual, and 602(a)(19) of this title (relating to the work incentive program); and

(B) subject to paragraph (4), use to cover the costs of the project such funds as are appropriated for payment to such State with respect to the assistance which is or would, except for participation in a project under this subsection, be payable to individuals participating in such projects under part A of

subchapter IV of this chapter for any fiscal year in which such projects are conducted.

[*See main edition for text of (3) to (6)*]

(c) Child support enforcement programs

In the case of any experimental, pilot, or demonstration project undertaken under subsection (a) of this section to assist in promoting the objectives of part D of subchapter IV of this chapter, the project—

(1) must be designed to improve the financial well-being of children or otherwise improve the operation of the child support program;

(2) may not permit modifications in the child support program which would have the effect of disadvantaging children in need of support; and

(3) must not result in increased cost to the Federal Government under the program of aid to families with dependent children.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(e)(5), 98 Stat. 1168; Aug. 16, 1984, Pub. L. 98-378, § 10, 98 Stat. 1317; Apr. 7, 1986, Pub. L. 99-272, title XIV, § 14001(b)(2), 100 Stat. 328.)

AMENDMENTS

1986—Subsec. (b)(2)(C). Pub. L. 99-272 struck out subpar. (C) relating to use of funds as are appropriated for payments to States under chapter 67 of title 31 to cover costs of salaries for individuals in public service employment.

1984—Subsec. (a). Pub. L. 98-378, § 10(a)(1), substituted "part A or D of subchapter IV" for "part A of subchapter IV" in provisions preceding par. (1).

Pub. L. 98-369, § 2663(e)(5), struck out "VI," after "I," in provisions preceding par. (1).

Subsec. (a)(1). Pub. L. 98-378, § 10(a)(2), inserted "654,".

Pub. L. 98-369, § 2663(e)(5), struck out "802," after "602,".

Subsec. (a)(2). Pub. L. 98-378, § 10(a)(3), inserted "655,".

Pub. L. 98-369, § 2663(e)(5), struck out "803," after "603,".

Subsec. (c). Pub. L. 98-378, § 10(b), added subsec. (c).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 effective Oct. 18, 1986, see section 14001(e) of Pub. L. 99-272, set out as a Termination of General Revenue Sharing note under section 6701 of Title 31, Money and Finance.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 645, 1398b of this title.

§ 1316. Administrative and judicial review of public assistance determinations

(a) Determination of conformity with requirements for approval; petition for reconsideration; hearing; time limitations; review by court of appeals

(1) Whenever a State plan is submitted to the Secretary by a State for approval under subchapter I, X, XIV, XVI, or XIX of this chapter, or part A of subchapter IV of this chapter, he shall, not later than 90 days after the date the plan is submitted to him, make a determination as to whether it conforms to the requirements for approval under such subchapter. The 90-day period provided herein may be extended by written agreement of the Secretary and the affected State.

[*See main edition for text of (2)*]

(3) Any State which is dissatisifed with a final determination made by the Secretary on such a reconsideration or a final determination of the Secretary under section 304, 604, 1204, 1354, 1384, or 1396c of this title may, within 60 days after it has been notified of such determination, file with the United States court of appeals for the circuit in which such State is located a petition for review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his determination as provided in section 2112 of title 28.

[*See main edition for text of (4) and (5)*]

(h) Amendment of plans

For the purposes of subsection (a) of this section, any amendment of a State plan approved under subchapter I, X, XIV, XVI, or XIX of this chapter, or part A of subchapter IV of this chapter, may, at the option of the State, be treated as the submission of a new State plan.

[*See main edition for text of (c)*]

(d) Items covered under other subchapters; disallowance

Whenever the Secretary determines that any item or class of items on account of which Federal financial participation is claimed under subchapter I, X, XIV, XVI, or XIX of this chapter, or part A of subchapter IV of this chapter, shall be disallowed for such participation, the State shall be entitled to and upon request shall receive a reconsideration of the disallowance.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2354(c)(2), title VI, § 2663(e)(6), 98 Stat. 1102, 1168.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-369, § 2663(e)(6)(A), struck out "VI," after "I,".

Pub. L. 98-369, § 2354(c)(2), corrected typographical error in directory language of Pub. L. 97-35, § 2353(h)(1). See 1982 Amendment note below.

Subsec. (a)(3). Pub. L. 98-369, § 2663(e)(6)(B), struck out "804," after "604,".

Subsec. (b). Pub. L. 98-369, § 2663(e)(6)(A), struck out "VI," after "I,".

Pub. L. 98-369, § 2354(c)(2), corrected typographical error in directory language of Pub. L. 97-35, § 2353(h)(1). See 1982 Amendment note below.

Subsec. (d). Pub. L. 98-369, § 2663(e)(6)(A), struck out "VI," after "I,".

Pub. L. 98-369, § 2663(e)(6)(C), substituted "XVI, or XIX of this chapter, or part A" for "XVI, or or XIX of this chapter, or part A".

1981—Subsec. (a)(1). Pub. L. 97-35, § 2353(h)(1), as amended by Pub. L. 98-369, § 2354(c)(2), substituted "or XIX of this chapter" for "XIX or XX of this chapter".

Subsec. (b). Pub. L. 97-35, § 2353(h)(1), as amended by Pub. L. 98-369, § 2354(c)(2), substituted "or XIX of this chapter" for "XIX or XX of this chapter".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2354(c)(2) of Pub. L. 98-369 effective as if originally included in Pub. L. 97-35, see section 2354(e)(2) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 1317. Appointment of Administrator of Health Care Financing Administration

The Administrator of the Health Care Financing Administration shall be appointed by the President by and with the advice and consent of the Senate.

(Aug. 14, 1935, ch. 531, title XI, § 1117, as added July 18, 1984, Pub. L. 98-369, div. B, title III, § 2332(a), 98 Stat. 1088.)

PRIOR PROVISIONS

A prior section 1317, act Aug. 14, 1935, ch. 531, title XI, § 1117, as added July 30, 1965, Pub. L. 89-97, title IV, § 405, 79 Stat. 420, and amended Jan. 2, 1968, Pub. L. 90-248, title II, §§ 221(a)-(c), 241(c)(6), 81 Stat. 899, 917, which related to maintenance of State public assistance expenditures, was repealed by Pub. L. 90-248, title II, § 221(d), Jan. 2, 1968, 81 Stat. 900, eff. July 1, 1968.

EFFECTIVE DATE

Section 2332(c) of Pub. L. 98-369 provided that: "The amendments made by this section [enacting section 1317 of this title and amending section 5315 of Title 5, Government Organization and Employees] shall apply to appointments made after the date of the enactment of this Act [July 18, 1984]."

§ 1320. Approval of certain projects

No payment shall be made under this chapter with respect to any experimental, pilot, demonstration, or other project all or any part of which is wholly financed with Federal funds made available under this chapter (without any State, local, or other non-Federal financial participation) unless such project shall have been personally approved by the Secretary or Under Secretary of Health and Human Services.

(Aug. 14, 1935, ch. 531, title XI, § 1120, as added Jan. 2, 1968, Pub. L. 90-248, title II, § 249, 81 Stat. 919, and amended Jan. 2, 1975, Pub. L. 93-608, § 2(5), 88 Stat. 1971; Dec. 21, 1982, Pub. L. 97-375, title I, § 107(a), 96 Stat. 1820; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(j)(2)(D)(v), 98 Stat. 1170.)

AMENDMENTS

1984—Pub. L. 98-369 substituted "Health and Human Services" for "Health, Education, and Welfare".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 1320a. Uniform reporting systems for health services facilities and organizations

REFERENCES IN TEXT

Sections 300*l*-4 and 800m of this title, referred to in subsec. (c), were repealed effective Jan. 1, 1987, by Pub. L. 99-660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799.

§ 1320a-1. Limitation on use of Federal funds for capital expenditures

[*See main edition for text of* (a)]

(h) Agreement between Secretary and State for submission of proposed capital expenditures related to health care facilities and procedures for appeal from recommendations

The Secretary, after consultation with the Governor (or other chief executive officer) and with appropriate local public officials, shall make an agreement with any State which is able and willing to do so under which a designated planning agency (which shall be an agency described in clause (ii) of subsection (d)(1)(B) of this section that has a governing body or advisory board at least half of whose members represent consumer interests) will—

(1) make, and submit to the Secretary together with such supporting materials as he may find necessary, findings and recommendations with respect to capital expenditures proposed by or on behalf of any health care facility in such State within the field of its responsibilities,

[*See main edition for text of* (2) *and* (3)]

whenever and to the extent that the findings of such designated agency or any such other agency indicate that any such expenditure is not consistent with the standards, criteria, or plans developed pursuant to the Public Health Service Act [42 U.S.C. 201 et seq.] to meet the need for adequate health care facilities in the area covered by the plan or plans so developed.

(c) Manner of payment to States for carrying out agreement

The Secretary shall pay any such State from the general fund in the Treasury, in advance or by way of reimbursement as may be provided in the agreement with it (and may make adjustments in such payments on account of overpayments or underpayments previously made), for the reasonable cost of performing the functions specified in subsection (b) of this section.

[*See main edition for text of* (d) *to* (f)]

(g) "Capital expenditure" defined

For the purposes of this section, a "capital expenditure" is an expenditure which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance and which (1) exceeds $600,000 (or such lesser amount as the State may establish), (2) changes the bed capacity of

the facility with respect to which such expenditure is made, or (3) substantially changes the services of the facility with respect to which such expenditure is made. For purposes of clause (1) of the preceding sentence, the cost of the studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of the plant and equipment with respect to which such expenditure is made shall be included in determining whether such expenditure exceeds the dollar amount specified in clause (1).

[*See main edition for text of (h)*]

(i) National advisory council; establishment or designation of existing council; functions; consultations with other appropriate national advisory councils; composition; compensation and travel expenses

[*See main edition for text of (1) and (2)*]

(3) If an advisory council is established by the Secretary under paragraph (1), it shall be composed of members who are not otherwise in the regular full-time employ of the United States, and who shall be appointed by the Secretary without regard to the civil service laws from among leaders in the fields of the fundamental sciences, the medical sciences, and the organization, delivery, and financing of health care, and persons who are State or local officials or are active in community affairs or public or civic affairs or who are representative of minority groups. Members of such advisory council, while attending meetings of the council or otherwise serving on business of the council, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the maximum rate specified at the time of such service for grade GS-18 in section 5332 of title 5, including traveltime, and while away from their homes or regular places of business they may also be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of such title 5 for persons in the Government service employed intermittently.

(j) Capital expenditure review exception for eligible organization health care facilities

A capital expenditure made by or on behalf of a health care facility shall not be subject to review pursuant to this section if 75 percent of the patients who can reasonably be expected to use the service with respect to which the capital expenditure is made will be individuals enrolled in an eligible organization as defined in section 1395mm(b) of this title, and if the Secretary determines that such capital expenditure is for services and facilities which are needed by such organization in order to operate efficiently and economically and which are not otherwise readily accessible to such organization because—

(1) the facilities do not provide common services at the same site (as usually provided by the organization),

(2) the facilities are not available under a contract of reasonable duration,

(3) full and equal medical staff privileges in the facilities are not available,

(4) arrangements with such facilities are not administratively feasible, or

(5) the purchase of such services is more costly than if the organization provided the services directly.

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, § 607(a), (b)(1), (c), 97 Stat. 171, 172; July 18, 1984, Pub. L. 98-369, div. B, title III, § 2354(a)(1), (2), 98 Stat. 1100.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-389, § 2354(a)(1), substituted a comma for the period at end of par. (1), and struck out "(or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963)" before "to meet the need" in provisions following par. (3).

Subsec. (i)(3). Pub. L. 98-369, § 2354(a)(2), substituted "5703" for "5703(b)".

1983—Subsec. (c). Pub. L. 98-21, § 607(a), substituted "the general fund in the Treasury" for "the Federal Hospital Insurance Trust Fund".

Subsec. (g). Pub. L. 98-21, § 607(b)(1), substituted "$000,000 (or such lesser amount as the State may establish)" for "$100,000" and Pub. L. 98-21, § 607(b)(1)(B), substituted "the dollar amount specified in clause (1)" for "$100,000" the second time it appeared.

Subsec. (j). Pub. L. 98-21, § 607(c), added subsec. (j).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2354(e) of Pub. L. 98-369 provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending sections 1316, 1320a-1, 1320a-7a, 1320a-8, 1395f, 1395l, 1395l-2, 1395k, 1395*l*, 1395n, 1395p, 1395s to 1395z, 1395aa, 1395cc, 1395ff, 1395ll, 1395*ll*, 1395mm, 1395oo, 1395rr, and 1395ww of this title and section 162 of Title 26, Internal Revenue Code, and amending provisions set out as notes under sections 1320c, 1395x, and 1395mm of this title] shall be effective on the date of the enactment of this Act [July 18, 1984]; but none of such amendments shall be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date.

"(2) The amendments made by paragraphs (1) [amending section 1395f of this title and amending provisions set out as a note under section 1395x of this title], (2) [amending section 1316 of this title], and (3) [amending provisions set out as notes under sections 1320c and 1395mm of this title] of subsection (c) shall be effective as if they had been originally included in Public Laws 96-499, 97-35, and 97-248, respectively."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395x, 1395ww, 1396b, 6371d of this title.

§ 1320a-2. Qualifications for health care personnel

(a) The Secretary, in carrying out his functions relating to the qualifications for health care personnel under subchapter XVIII of this chapter, shall develop (in consultation with appropriate professional health organizations and State health and licensure agencies) and conduct (in conjunction with State health and licensure agencies) until September 30, 1987, a program designed to determine the proficiency of individuals (who do not otherwise meet the formal educational, professional membership, or other specific criteria established for determining the qualifications of practical nurses, therapists, laboratory technicians, and tech-

nologists, and cytotechnologists, X-ray technicians, psychiatric technicians, or other health care technicians and technologists) to perform the duties and functions of practical nurses, therapists, laboratory technicians, technologists, and cytotechnologists, X-ray technicians, psychiatric technicians, or other health care technicians and technologists. Such program shall include (but not be limited to) the employment of procedures for the formal testing of the proficiency of individuals. In the conduct of such program, no individual who otherwise meets the proficiency requirements for any health care specialty shall be denied a satisfactory proficiency rating solely because of his failure to meet formal educational or professional membership requirements.

[*See main edition for text of (b)*]

(As amended Apr. 7, 1986, Pub. L. 99-272, title IX, § 9303(b)(4), 100 Stat. 189.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-272 substituted "September 30, 1987" for "September 30, 1983".

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9303(b)(5)(C) of Pub. L. 99-272 provided that: "The amendment made by paragraph (4) [amending this section] shall take effect on the date of the enactment of this Act [Apr. 7, 1986]."

§ 1320a-3. Disclosure of ownership and related information; procedure; definitions; scope of requirements

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300e-17, 1395x, 1396a, 1396b, 6024 of this title.

§ 1320a-5. Disclosure by institutions, organizations, and agencies of owners, officers, etc., convicted of offenses related to programs; notification requirements; "managing employee" defined

(a) As a condition of participation in or certification or recertification under the programs established by subchapters XVIII,[1] and XIX of this chapter, any hospital, nursing facility, or other institution, organization, or agency shall be required to disclose to the Secretary or to the appropriate State agency the name of any person who—

[*See main edition for text of (1) and (2)*]

The Secretary or the appropriate State agency shall promptly notify the Inspector General in the Department of Health and Human Services of the receipt from any institution, organization, or agency of any application or request for such participation, certification, or recertification which discloses the name of any such person, and shall notify the Inspector General of the action taken with respect to such application or request.

[*See main edition for text of (b)*]

(Aug. 14, 1935, ch. 531, title XI, § 1126, as added Oct. 25, 1977, Pub. L. 95-142, § 8(a), 91 Stat. 1194, and amended Aug. 13, 1981, Pub. L. 97-35, title XXIII, § 2353(j), 95 Stat. 873; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(j)(2)(D)(vi), 98 Stat. 1170.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369 substituted "Health and Human Services" for "Health, Education, and Welfare" in provisions following par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320a-7, 1395cc, 1396b, 6024 of this title.

§ 1320a-6. Adjustments in SSI benefits on account of retroactive benefits under subchapter II

(a) Reduction in benefits

Notwithstanding any other provision of this chapter, in any case where an individual—

(1) is entitled to benefits under subchapter II of this chapter that were not paid in the months in which they were regularly due; and

(2) is an individual or eligible spouse eligible for supplemental security income benefits for one or more months in which the benefits referred to in clause (1) were regularly due,

then any benefits under subchapter II of this chapter that were regularly due in such month or months, or supplemental security income benefits for such month or months, which are due but have not been paid to such individual or eligible spouse shall be reduced by an amount equal to so much of the supplemental security income benefits, whether or not paid retroactively, as would not have been paid or would not be paid with respect to such individual or spouse if he had received such benefits under subchapter II of this chapter in the month or months in which they were regularly due.

(b) "Supplemental security income benefits" defined

For purposes of this section, the term "supplemental security income benefits" means benefits paid or payable by the Secretary under subchapter XVI of this chapter, including State supplementary payments under an agreement pursuant to section 1382e(a) of this title or an administration agreement under section 212(b) of Public Law 93-66.

(c) Reimbursement of the State

From the amount of the reduction made under subsection (a) of this section, the Secretary shall reimburse the State on behalf of which supplementary payments were made for the amount (if any) by which such State's expenditures on account of such supplementary payments for the month or months involved exceeded the expenditures which the State would have made (for such month or months) if the individual had received the benefits under subchapter II of this chapter at the times they

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

were regularly due. An amount equal to the portion of such reduction remaining after reimbursement of the State under the preceding sentence shall be covered into the general fund of the Treasury.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2615(a), 98 Stat. 1132.)

REFERENCES IN TEXT

Section 212(b) of Pub. L. 93-66, referred to in subsec. (b), is set out as a note under section 1382 of this title.

AMENDMENTS

1984—Pub. L. 98-369 substituted provisions relating to adjustment in supplemental security income benefits on account of retroactive benefits under subchapter II of this chapter for provisions which related to adjustment of retroactive benefits under subchapter II of this chapter on account of supplemental security income benefits.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2615(b) of Pub. L. 98-369 provided that: "The amendment made by this section [amending this section] shall apply for purposes of reducing retroactive benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] or retroactive supplemental security income benefits payable beginning with the seventh month following the month in which this Act is enacted [July 1984]; except that in the case of retroactive title II benefits other than those which result from a determination of entitlement following an application for benefits under title II or from a reinstatement of benefits under title II following a period of suspension or termination of such benefits, it shall apply when the Secretary of Health and Human Services determines that it is administratively feasible."

§ 1320a-7. Exclusion of certain individuals from program

[*See main edition for text of (a)*]

(b) Individuals with ownership or control of 5 percent or more; officers, directors, agents, or managing employees; exclusion determination; notice to State and local agencies

Whenever the Secretary determines, with respect to an entity, that a person who has a direct or indirect ownership or control interest of 5 percent or more in the entity, or who is an officer, director, agent, or managing employee (as defined in section 1320a-5(b) of this title) of such entity, is a person described in section 1320a-5(a) of this title, the Secretary—

(1) may bar from participation in the program under subchapter XVIII of this chapter, for such period as he may deem appropriate, each such entity otherwise eligible to participate in such program;

(2) shall promptly notify each appropriate State agency administering or supervising the administration of a State plan approved under subchapter XIX of this chapter of the fact and circumstances of the determination, and may require each such agency to bar the entity from participation under the State plan for such period as he specifies, which may not exceed the period established pursuant to paragraph (1); and

(3) shall promptly notify the appropriate State or local agency or authority having responsibility for the licensing or certification of such entity of the fact and circumstances of such determination, request that appropriate investigations be made and sanctions invoked in accordance with applicable State law and policy, and request that such State or local agency or authority keep the Secretary and the Inspector General of the Department of Health and Human Services fully and currently informed with respect to any actions taken in response to such request.

(c) Individuals subject to civil sanction for medicare or medicaid misconduct; exclusion determination; notice to State and local agencies

Whenever the Secretary makes a final determination to impose a civil money penalty or assessment against a person (including an organization, agency, or other entity) under section 1320a-7a of this title relating to a claim under subchapter XVIII or XIX of this chapter, the Secretary—

(1) may bar the person from participation in the program under subchapter XVIII of this chapter, and

(2)(A) shall promptly notify each appropriate State agency administering or supervising the administration of a State plan approved under subchapter XIX of this chapter of the fact and circumstances of such determination, and (except as provided in subparagraph (B)) may require each such agency to bar the person from participation in the program established by such plan for such period as he shall specify, which in the case of an individual shall be the period established pursuant to paragraph (1), and

(B) may waive the requirement of subparagraph (A) to bar a person from participation in such program where he receives and approves a request for such waiver with respect to that person from the State agency referred to in that subparagraph.

(d) Period of exclusion

A determination made by the Secretary under this section shall be effective at such time and upon such reasonable notice to the public and to the person furnishing the services involved as may be specified in regulations. Such determination shall be effective with respect to services furnished to an individual on or after the effective date of such determination (except that in the case of inpatient hospital services, post-hospital extended care services, and home health services furnished under subchapter XVIII of this chapter, such determination shall be effective in the manner provided in paragraphs (3) and (4) of section 1395cc(b) of this title with respect to terminations of agreements), and shall remain in effect until the Secretary finds and gives reasonable notice to the public that the basis for such determination has been removed and that there is reasonable assurance that it will not recur.

(e) Notice, hearing, and judicial review

Any person or entity who is the subject of an adverse determination made by the Secretary under subsection (a), (b), or (c) of this section shall be entitled to reasonable notice and opportunity for a hearing thereon 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.

(f) Physicians or other individuals convicted of criminal offenses

For purposes of subsection (a) of this section, a physician or other individual is considered to have been "convicted" of a criminal offense—

(1) when a judgment of conviction has been entered against the physician or individual by a Federal, State, or local court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged;

(2) when there has been a finding of guilt against the physician or individual by a Federal, State, or local court;

(3) when a plea of guilty or nolo contendere by the physician or individual has been accepted by a Federal, State, or local court; or

(4) when the physician or individual has entered into participation in a first offender or other program where judgment of conviction has been withheld.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2333(a), (b), 98 Stat. 1089; Oct. 21, 1986, Pub. L. 99-509, title IX, § 9317(c), 100 Stat. 2008.)

AMENDMENTS

1986—Subsec. (f). Pub. L. 99-509 added subsec. (f).

1984—Subsecs. (b) to (d). Pub. L. 98-369, § 2333(a), added subsec. (b) and redesignated former subsecs. (b) to (d) as (c) to (e), respectively.

Subsec. (e). Pub. L. 98-369, § 2333(a)(1), (b), redesignated former subsec. (d) as (e), and substituted therein "Any person or entity" for "Any person" and "(a), (b), or (c)" for "(a) or (b)".

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9317(d)(3) of Pub. L. 99-509 provided that: "The provisions—

"(A) of paragraphs (1), (2), and (3) of section 1128(f) of the Social Security Act [42 U.S.C. 1320a-7(f)(1) to (3)] (as added by the amendment made by subsection (c)) shall apply to judgments entered, findings made, and pleas entered, before, on, or after the date of the enactment of this Act [Oct. 21, 1986], and

"(B) of paragraph (4) of such section shall apply te participation in a program entered into on or after the date of the enactment of this Act."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2333(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this section] beccme effective on the date of the enactment of this Act [July 18, 1984] and shall apply to convictions of persons occurring after such date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395y, 1396a of this title.

§ 1320a-7a. Civil monetary penalties

(a) Improperly filed claims

Any person (including an organization, agency, or other entity) that—

(1) presents or causes to be presented to an officer, employee, or agent of the United States, or of any department or agency thereof, or of any State agency (as defined in subsection (i)(1) of this section), a claim (as defined in subsection (i)(2) of this section) that the Secretary determines is for a medical or other item or service—

[*See main edition for text of (A) and (B)*]

(2) presents or causes to be presented to any person a request for payment which is in violation of the terms of (A) an assignment under section 1395u(b)(3)(B)(ii) of this title, or (B) an agreement with a State agency not to charge a person for an item or service in excess of the amount permitted to be charged, or (C) an agreement to be a participating physician or supplier under section 1395u(h)(1) of this title,

shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $2,000 for each item or service. In addition, such a person shall be subject to an assessment of not more than twice the amount claimed for each such item or service in lieu of damages sustained by the United States or a State agency because of such claim.

(h) Payments to induce reduction or limitation of services

(1) If a hospital, an eligible organization with a risk-sharing contract under section 1395mm of this title, or an entity with a contract under section 1396b(m) of this title knowingly makes a payment, directly or indirectly, to a physician as an inducement to reduce or limit services provided with respect to individuals who—

(A) are entitled to benefits under part A or part B of subchapter XVII [4] of this chapter or to medical assistance under a State plan approved under subchapter XIX of this chapter,

(B) in the case of an eligible organization or an entity, are enrolled with the organization or entity, and

(C) are under the direct care of the physician,

the hospital or organization shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $2,000 for each such individual with respect to whom the payment is made.

(2) Any physician who knowingly accepts receipt of a payment described in paragraph (1) shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $2,000 for individual [5] described in such paragraph with respect to whom the payment is made.

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[4] So in original. Probably should be "XVIII".

[5] So in original.

(c) Initiation of proceeding; authorization by Attorney General, notice, etc., estoppel, failure to comply with order or procedure

(1) The Secretary may initiate a proceeding to determine whether to impose a civil money penalty or assessment under subsection (a) or (b) of this section only as authorized by the Attorney General pursuant to procedures agreed upon by them.

(2) The Secretary shall not make a determination adverse to any person under subsection (a) or (b) of this section until the person has been given written notice and an opportunity for the determination to be made on the record after a hearing at which the person is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses against the person.

(3) In a proceeding under subsection (a) or (b) of this section which—

(A) is against a person who has been convicted (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) of a Federal crime charging fraud or false statements, and

(B) involves the same transaction as in the criminal action,

the person is estopped from denying the essential elements of the criminal offense.

(4) The official conducting a hearing under this section may sanction a person, including any party or attorney, for failing to comply with an order or procedure, failing to defend an action, or other misconduct as would interfere with the speedy, orderly, or fair conduct of the hearing. Such sanction shall reasonably relate to the severity and nature of the failure or misconduct. Such sanction may include—

(A) in the case of refusal to provide or permit discovery, drawing negative factual inferences or treating such refusal as an admission by deeming the matter, or certain facts, to be established,

(B) prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense,

(C) striking pleadings, in whole or in part,

(D) staying the proceedings,

(E) dismissal of the action,

(F) entering a default judgment,

(G) ordering the party or attorney to pay attorneys' fees and other costs caused by the failure or misconduct, and

(H) refusing to consider any motion or other action which is not filed in a timely manner.

(d) Amount or scope of penalty or assessment

In determining the amount or scope of any penalty or assessment imposed pursuant to subsection (a) or (b) of this section, the Secretary shall take into account—

(1) the nature of claims and the circumstances under which they were presented,

(2) the degree of culpability, history of prior offenses, and financial condition of the person presenting the claims, and

(3) such other matters as justice may require.

(e) Review by courts of appeals

Any person adversely affected by a determination of the Secretary under this section may obtain a review of such determination in the United States Court of Appeals for the circuit in which the person resides, or in which the claim was presented, by filing in such court (within sixty days following the date the person is notified of the Secretary's determination) a written petition requesting that the determination be modified or set aside. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the Court [6] the record in the proceeding as provided in section 2112 of title 28. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have the power to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, remanding for further consideration, or setting aside, in whole or in part, the determination of the Secretary and enforcing the same to the extent that such order is affirmed or modified. No objection that has not been urged before the Secretary shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Secretary with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Secretary, the court may order such additional evidence to be taken before the Secretary and to be made a part of the record. The Secretary may modify his findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and he shall file with the court such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and his recommendations, if any, for the modification or setting aside of his original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28.

(f) Compromise of penalties and assessments; recovery; use of funds recovered

Civil money penalties and assessments imposed under this section may be compromised by the Secretary and may be recovered in a civil action in the name of the United States brought in United States district court for the district where the claim was presented, or where the claimant resides, as determined by the Secretary. Amounts recovered under this

[6] So in original. Probably should be "court".

section shall be paid to the Secretary and disposed of as follows:

(1)(A) In the case of amounts recovered arising out of a claim under subchapter XIX of this chapter, there shall be paid to the State agency an amount equal to the State's share of the amount paid by the State agency for such claim.

(B) In the case of amounts recovered arising out of a claim under an allotment to a State under subchapter V of this chapter, there shall be paid to the State agency an amount equal to three-sevenths of the amount recovered.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under sections 1395i and 1395t of this title shall be repaid to such trust funds.

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

The amount of such penalty or assessment, when finally determined, or the amount agreed upon in compromise, may be deducted from any sum then or later owing by the United States or a State agency to the person against whom the penalty or assessment has been assessed.

(g) Finality of determination respecting penalty or assessment

A determination by the Secretary to impose a penalty or assessment under subsection (a) or (b) of this section shall be final upon the expiration of the sixty-day period referred to in subsection (e) of this section. Matters that were raised or that could have been raised in a hearing before the Secretary or in an appeal pursuant to subsection (e) of this section may not be raised as a defense to a civil action by the United States to collect a penalty or assessment assessed under this section.

(h) Notification of appropriate entities of finality of determination

Whenever the Secretary's determination to impose a penalty or assessment under subsection (a) or (b) of this section becomes final, he shall notify the appropriate State or local medical or professional organization, and the appropriate utilization and quality control peer review organization, and the appropriate State or local licensing agency or organization (including the agency specified in section 1395aa(a) and 1396a(a)(33) of this title) that such a penalty or assessment has become final and the reasons therefor.

(i) Definitions

For the purposes of this subsection:

(1) The term "State agency" means the agency established or designated to administer or supervise the administration of the State plan under subchapter XIX of this chapter or designated to administer the State's program under subchapter V of this chapter.

(2) The term "claim" means an application submitted by—

(A) a provider of services or other person, agency, or organization that furnishes an item or service under subchapter XVIII of this chapter, or

(B) a person, agency, or organization that furnishes an item or service for which medical assistance is provided under subchapter XIX of this chapter, or

(C) a person, agency, or organization that provides an item or service for which payment is made under subchapter V of this chapter or from an allotment to a State under such subchapter,

to the United States or a State agency, or agent thereof, for payment for health care services under subchapter XVIII or XIX of this chapter or for any item or service under subchapter V of this chapter.

(3) The term "item or service" includes (A) any particular item, device, medical supply, or service claimed to have been provided to a patient and listed in an itemized claim for payment, and (B) in the case of a claim based on costs, any entry in the cost report, books of account or other documents supporting such claim.

(4) The term "agency of the United States" includes any contractor acting as a fiscal intermediary, carrier, or fiscal agent or any other claims processing agent for a health insurance or medical services program under subchapter XVIII or XIX of this chapter.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2306(f)(1), 2354(a)(3), 98 Stat. 1073, 1100; Oct. 21, 1986, Pub. L. 99-509, title IX, §§ 9313(c)(1), 9317(a), (b), 100 Stat. 2003, 2008.)

AMENDMENTS

1986—Subsec. (a)(1). Pub. L. 99-509, § 9313(c)(1)(B), substituted "(i)(1)" and "(i)(2)" for "(h)(1)" and "(h)(2)", respectively.

Subsec. (b). Pub. L. 99-509, § 9313(c)(1)(D), (E), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 99-509, § 9313(c)(1)(A), (D), redesignated subsec. (b) as (c) and substituted "subsection (a) or (b)" for "subsection (a)" in pars. (1) and (2). Former subsec. (c) redesignated (d).

Subsec. (c)(3). Pub. L. 99-509, § 9317(a), added par. (3).

Subsec. (c)(4). Pub. L. 99-509, § 9317(b), added par. (4).

Subsec. (d). Pub. L. 99-509, § 9313(c)(1)(A), (D), redesignated subsec. (c) as (d) and substituted "subsection (a) or (b)" for "subsection (a)" in introductory provisions. Former subsec. (d) redesignated (e).

Subsecs. (e), (f). Pub. L. 99-509, § 9313(c)(1)(D), redesignated subsecs. (d) and (e) as (e) and (f), respectively. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 99-509, § 9313(c)(1)(A), (C), (D), redesignated subsec. (f) as (g) and substituted "subsection (a) or (b)" for "subsection (a)" and "subsection (e)" for "subsection (d)". Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 99-509, § 9313(c)(1)(A), (D), redesignated subsec. (g) as (h) and substituted "subsection (a) or (b)" for "subsection (a)". Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 99-509, § 9313(c)(1)(D), redesignated subsec. (h) as (i).

1984—Subsec. (a)(2)(C). Pub. L. 98-369, § 2306(f)(1), added cl. (C).

Subsec. (g). Pub. L. 98-369, § 2354(a)(3), substituted "utilization and quality control peer review organization" for "Professional Standards Review Organization".

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9313(c)(2) of Pub. L. 99-509 provided that: "The amendments made by paragraph (1) [amending this section] shall apply to—

"(A) payments by hospitals occurring more than 6 months after the date of the enactment of this Act [Oct. 21, 1986], and

"(B) payments by eligible organizations or entities occurring on or after April 1, 1989."

Section 9317(d)(1), (2) of Pub. L. 99-509 provided that:

"(1) The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 21, 1986], without regard to when the criminal conviction was obtained, but shall only apply to a conviction upon a plea of nolo contendere tendered after the date of the enactment of this Act.

"(2) The amendment made by subsection (b) [amending this section] shall apply to failures or misconduct occurring on or after the date of the enactment of this Act."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2354(a)(3) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

STUDY AND REPORT ON INCENTIVE ARRANGEMENTS OFFERED TO PHYSICIANS

Section 9313(c)(3) of Pub. L. 99-509 provided that: "The Secretary of Health and Human Services shall report to Congress, not later than January 1, 1988, concerning incentive arrangements offered by health maintenance organizations and competitive medical plans to physicians. The report shall—

"(A) review the type of incentive arrangements in common use,

"(B) evaluate their potential to pressure improperly physicians to reduce or limit services in a medically inappropriate manner, and

"(C) make recommendations concerning providing for an exception, to the prohibition contained in section 1128A(b) of the Social Security Act [42 U.S.C. 1320a-7a(b)], for incentive arrangements that may be used by such organizations and plans to encourage efficiency in the utilization of medical and other services but that do not have a substantial potential for adverse effect on quality."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred te in sections 707, 1320a-7, 1395*l*, 1395u, 1395cc, 13955dd, 1395mm, 1396b, 11131, 11137 of this title; title 10 section 1094.

§ 1320a-8. Coordinated audits

(a) If an entity provides services reimbursable on a cost-related basis under subchapter XIX of this chapter, as well as services reimbursable on such a basis under subcbapter XVIII of this chapter, the Secretary shall require, as a condition for payment to any State under subchapter XIX of this chapter with respect to administrative costs incurred in the performance of audits of the books, accounts, and records of that entity, that these audits be coordinatcd through common audit procedures with audits performed with respect to the entity for purposes of subchapter XVIII of this chapter. The Secretary shall specify by regulation such methods as he finds feasible and equitable for the apportionment of the cost of coordlnated audits between the program established under subchapter XIX of this chapter and the program established under subchapter XVIII of this chapter. Where the Secretary finds that a State has declined to participate in such a common audit with respect to subchapter XIX of this chapter, he shall reduce the payments otherwise due such State under such subchapter by an amount which he estimates to be in excess of the amount that would have been apportioned to the State under the subchapter (for the expenses of the State incurred in the common audit) if it had participated in the common audit.

[*See main edition for text of* (b)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2354(a)(4), 98 Stat. 1100.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369 substituted "State" for "Sate".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

§ 1320b-1. Notification of social security claimant with respect to deferred vested benefits

(a) Whenever—

[*See main edition for text of* (1)]

(2) the Secretary is requested to do so—

(A) by any individual with respect to whom the Secretary holds information obtained under section 6057 of title 26, or

(B) in the case of the death of the individual referred to in subparagraph (A), by the individual who would be entitled to payment under section 404(d) of this title,

he shall transmit to the individual referred to in paragraph (1) or the individual making the request under paragraph (2) any information, as reported by the employer, regarding any deferred vested benefit transmitted to the Secretary pursuant to such section 6057 with respect to the individual referred to in paragraph (1) or (2)(A) or the person on whose wages and self-employment income entitlement (or claim of entitlement) is based.

[*See main edition for text of* (b)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(e)(7), 98 Stat. 1168.)

REFERENCES IN TEXT

Part A of subchapter XVIII of this chapter, referred to in subsec. (a)(1)(C), is classified to section 1395c et seq. of this title.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 2663(e)(7)(B), realigned margin of provisions following par. (2)(B).

Subsec. (a)(2)(B). Pub. L. 98-369, § 2663(e)(7)(A), substituted a comma for the period after "section 404(d) of this title".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 1320b-5. Development of model prospective rate methodology

[*See main edition for text of (a) to (c)*]

(d) Prospective payment methodology for outpatient hospital services

(1) The Secretary shall develop a fully prospective payment system for ambulatory surgical procedures performed on patients in hospitals on an outpatient basis.

(2) The system shall, to the extent practicable, provide for an all-inclusive payment rate for ambulatory surgical procedures performed on patients in hospitals on an outpatient basis, which rate encompasses payment for facility services and all medical and other health services, other than physicians' services, commonly furnished in connection with such procedures.

(3) The system shall provide for appropriate payment rates with respect to such procedures.

(4) Such rates shall take into account at least the following considerations:

(A) The costs of hospitals providing ambulatory surgical procedures.

(B) The costs under this subchapter of payment for such procedures performed in ambulatory surgical centers.

(C) The extent to which any differences in such costs are justifiable.

(5) The Secretary shall submit to Congress—

(A) an interim report on the development of the system by April 1, 1988, and

(B) a final report on such system by April 1, 1989.

The report under subparagraph (B) shall include recommendations concerning the implementation of the payment system for ambulatory surgical procedures performed on or after October 1, 1989.

(6)(A) The Secretary shall develop a model system for the payment for outpatient hospital services other than ambulatory surgery.

(B) The Secretary shall submit to Congress a report on the model payment system under subparagraph (A) by January 1, 1991.

(As amended Oct. 21, 1986, Pub. L. 99-509, title IX, § 9343(f), 100 Stat. 2041.)

AMENDMENTS

1986—Subsec. (d). Pub. L. 99-509 added subsec. (d).

§ 1320b-6. Pilot projects to demonstrate the use of integrated service delivery systems for human services programs

(a) Establishment of pilot projects by States

In order to develop and demonstrate ways of improving the delivery of services to individuals and families who need them under the various human services programs, by eliminating programmatic fragmentation and thereby assuring that an applicant for services under any one such program will be informed of and have access to all of the services which may be available to him or his family under the other human services programs being carried out in the community involved, any State having an approved plan under part A of subchapter IV of this chapter may, subject to the provisions of this section, establish and conduct one or more pilot projects to demonstrate the use of integrated service delivery systems for human services programs in that State or in one or more political subdivisions thereof.

(b) Integration of service delivery systems for human services programs

The integration of service delivery systems for human services programs in any State or locality under a pilot project established under this section shall involve or include—

(1) the development of a common set of terms for use in all of the human services programs involved;

(2) the development for each applicant of a single comprehensive family profile which is suitable for use under all of the human services programs involved;

(3) the establishment and maintenance of a single resources directory by which the citizens of the community involved may be informed of and gain access to the services which are available under all such programs;

(4) the development of a unified budget and budgeting process, and a unified accounting system, with standardized audit procedures;

(5) the implementation of unified planning, needs assessment, and evaluation;

(6) the consolidation of agency locations and related transportation services;

(7) the standardization of procedures for purchasing services from nongovernmental sources;

(8) the creation of communications linkages among agencies to permit the serving of individual and family needs across program and agency lines;

(9) the development, to the maximum extent possible, of uniform application and eligibility determination procedures; and

(10) any other methods, arrangements, and procedures which the Secretary determines are necessary or desirable for, and consistent with, the establishment and operation of an integrated service delivery system.

(c) Procedures for State establishment of pilot projects

(1) Any State which desires to establish and conduct a pilot project under this section, after having published a description of the proposed project and invited comments thereon from interested persons in the community or communities which would be affected, shall submit an application to the Secretary (in such form and containing such information as the Secretary may require) within 6 months after July 18, 1984. The proposed project may be statewide in operation or may be limited to one or more political subdivisions of the State; and the application shall in any event include or be accompanied by satisfactory assurances that the project

as proposed would be permitted under applicable State and local law.

(2) The Secretary shall consider all applications and accompanying comments and materials which are submitted under paragraph (1), and, no later than 9 months after July 18, 1984, shall approve no fewer than 3 nor more than 5 of the proposed projects (including one such project to be operated on a statewide basis). In considering and approving such applications the Secretary shall take into account the size and characteristics of the population that would be served by each proposed project, the desirability of wide geographic distribution among the projects, the number and nature of the human services programs which are in active operation in the various communities involved, and such other factors as may tend to indicate whether or not a particular proposed project would provide a useful and effective demonstration of the value of an integrated service delivery system. Each project approved under this paragraph shall be deemed for purposes of this section to begin on the first day of the month following the month in which the application with respect to such project is approved.

(3) The Secretary shall approve any application for a project under this section only after determining that the conduct of such project will not lower or restrict the levels of aid, assistance, benefits, or services, or the income or resource standards, deductions, or exclusions, under any of the human services programs involved, and will not delay the provision of aid, assistance, benefits, or services under any of such programs.

(d) Requests by States for waiver of requirements

(1) Any State whose application is approved under subsection (c) of this section may submit to the Secretary a request for the waiver of any requirement which would otherwise apply with respect to the proposed project under any of the laws governing the human services programs to be included in the project; and—

(A) if the law involved is within the jurisdiction of the Secretary and authority to grant the waiver involved is otherwise available to the Secretary under this subchapter, subchapter IV of this chapter, or any other provision of law, the Secretary shall approve such request upon a determination that the waiver is necessary for the project to provide a useful and effective demonstration of the value of an integrated service delivery system; and

(B) if the law involved is within the jurisdiction of a Federal agency other than the Department of Health and Human Services and authority to grant the waiver involved is available to the head of such other agency under that law or any other provision of law, the Secretary shall transmit such request (on behalf of the requesting State) to the head of such other agency, who shall approve such request upon a determination that the waiver is necessary for the project to provide a useful and effective demonstration of the value of an integrated service delivery system and who shall certify such approval to the Secretary.

(2) If under the law governing any of the human services programs included within a project there are provisions establishing safeguards which limit or restrict the use or disclosure of information (concerning applicants for or recipients of benefits or services) which has been obtained or developed by the agency involved in the conduct of that program, and a waiver of such provisions is granted under paragraph (1) in order to make such information available for purposes of the project—

(A) the State shall provide each applicant for and recipient of aid, assistance, benefits, or services under the proposed integrated service delivery system with a clear and readily comprehensible notice that such information may be disclosed to and used by project personnel, or exchanged with the other agencies having responsibility for human services programs included within the project;

(B) the State shall take such steps as may be necessary to ensure that the information disclosed will be used only for purposes of, and by persons directly connected with, such project; and

(C) the State's application with respect to the project under subsection (c) of this section shall contain or be accompanied by satisfactory assurances that the preceding requirements of this paragraph will be fully complied with.

(e) Payments to States by Secretary

The Secretary shall from time to time pay to each State which has an approved pilot project under this section, in such manner and according to such schedule as may be agreed upon by the Secretary and such State, amounts equal in the aggregate to—

(1) 90 percent of the costs incurred by such State and its political subdivisions in carrying out such project during the first 18 months after the date on which the project begins,

(2) 80 percent of any such costs incurred during the 12-month period beginning with the nineteenth month after such date, and

(3) 70 percent of any such costs incurred during the 12-month period beginning with the thirty-first month after such date.

(f) "Human services program" defined; consultation by Secretary with other department heads

(1) For purposes of this section, the term "human services program" includes the program of aid to families with dependent children under part A of subchapter IV of this chapter, the supplemental security income benefits program under subchapter XVI of this chapter, the Federal food stamp program, and any other Federal or federally assisted program (other than a program under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.]) which provides aid, assistance, or benefits based wholly or partly on need or on income-related qualifications to specified classes or types of individuals or families or which is designed to help in crisis or emergency situations by meeting the basic human needs of individuals or families whose own resources are insufficient for that purpose.

(2) In carrying out this section the Secretary shall regularly consult with the Secretary of

Labor, the Secretary of Agriculture, the Secretary of Housing and Urban Development, and the head of any other Federal agency having jurisdiction over or responsibility for one or more human services programs, in order to ensure that the administrative efforts of the various agencies involved are coordinated with respect to all of the pilot projects being carried out under this section.

(g) Reports by States

The Secretary shall require each State which is carrying out a pilot project under this section to submit periodic reports on the progress of such project, giving particular attention to the cost-effectiveness of the integrated service delivery system involved and the extent to which such system is improving the delivery of services. No pilot project under this section shall be conducted for a period of longer than 42 months. The first such report shall be submitted no later than 3 months after the date on which the project begins.

(h) Report to Congress by Secretary

The Secretary shall from time to time submit to the Congress a report on the progress and current status of each of the approved pilot projects under this section. Each such report shall reflect the periodic reports theretofore submitted to the Secretary by the States involved under subsection (g) of this section, and shall contain such additional comments, findings, and recommendations with respect to the operation of the program under this section as the Secretary may determine to be appropriate.

(i) Study of program by Comptroller General

The Comptroller General shall, at such time or times as he determines to be appropriate, review and evaluate any or all of the pilot projects undertaken pursuant to this section, and shall from time to time report to the Congress on the results of such reviews and evaluations together with his findings and recommendations with respect thereto.

(j) Authorization of appropriations

There are authorized to be appropriated, for the four-fiscal-year period beginning with the fiscal year 1985, such sums, not to exceed $8,000,000 in the aggregate, as may be necessary to carry out this section.

(Aug. 14, 1935, ch. 531, title XI, § 1136, as added July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2630, 98 Stat. 1137, and amended Oct. 22, 1986, Pub. L. 99-514, title XVIII, § 1883(c)(2), 100 Stat. 2918.)

REFERENCES IN TEXT

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

The Rehabilitation Act of 1973, referred to in subsec. (f)(1), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified principally to chapter 16 (§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

AMENDMENTS

1986—Subsec. (b)(7). Pub. L. 99-514 substituted "nongovernmental" for "nongovermental".

EFFECTIVE DATE

Section effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98-369, set out as an Effective and Termination Dates of 1984 Amendments note under section 602 of this title.

§ 1320b-7. Income and eligibility verification system

(a) Requirements of State eligibility systems

In order to meet the requirements of this section, a State must have in effect an income and eligibility verification system which meets the requirements of subsection (d) of this section and under which—

(1) the State shall require, as a condition of eligibility for benefits under any program listed in subsection (b) of this section, that each applicant for or recipient of benefits under that program furnish to the State his social security account number (or numbers, if he has more than one such number), and the State shall utilize such account numbers in the administration of that program so as to enable the association of the records pertaining to the applicant or recipient with his account number;

(2) wage information from agencies administering State unemployment compensation laws available pursuant to section 3304(a)(16) of the Internal Revenue Code of 1986, wage information reported pursuant to paragraph (3) of this subsection, and wage, income, and other information from the Social Security Administration and the Internal Revenue Service available pursuant to section 6103(*l*)(7) of such Code, shall be requested and utilized to the extent that such information may be useful in verifying eligibility for, and the amount of, benefits available under any program listed in subsection (b) of this section, as determined by the Secretary of Health and Human Services (or, in the case of the unemployment compensation program, by the Secretary of Labor, or, in the case of the food stamp program, by the Secretary of Agriculture);

(3) employers in such State are required, effective September 30, 1988, to make quarterly wage reports to a State agency (which may be the agency administering the State's unemployment compensation law) except that the Secretary of Labor (in consultation with the Secretary of Health and Human Services and the Secretary of Agriculture) may waive the provisions of this paragraph if he determines that the State has in effect an alternative system which is as effective and timely for purposes of providing employment related income and eligibility data for the purposes described in paragraph (2);

(4) the State agencies administering the programs listed in subsection (b) of this section adhere to standardized formats and procedures established by the Secretary of Health and Human Services (in consultation with the Secretary of Agriculture) under which—

(A) the agencies will exchange with each other information in their possession which may be of use in establishing or verifying

eligibility or benefit amounts under any other such program;

(B) such information shall be made available te assist in the child support program under part D of subchapter IV of this chapter, and to assist the Secretary of Health and Human Services in establishing or verifying eligibility or benefit amounts under subchapters II and XVI of this chapter, but subject to the safeguards and restrictions established by tbe Secretary of the Treasury with respect to information released pursuant to section 6103(*l*) of the Internal Revenue Code of 1986; and

(C) the use of such information shall be targeted to those uses which are most likely to be productive in identifying and preventing ineligibility and incorrect payments, and no State shall be required to use such information to verify the eligibility of all recipients;

(5) adequate safeguards are in effect so as to assure that—

(A) the information exchanged by the State agencies is made available only to the extent necessary to assist in the valid administrative needs of the program receiving such information, and the information released pursuant to section 6103(*l*) of the Internal Revenue Code of 1986 is only exchanged with agencies authorized te receive such information under such section 6103(*l*); and

(B) the information is adequately protected against unauthorized disclosure for other purposes, as provided in regulations established by the Secretary of Health and Human Services, or, in the case of the unemployment compensation program, the Secretary of Labor, or, in the case of the food stamp program, the Secretary of Agriculture, or [1] in the case of information released pursuant to section 6103(*l*) of the Internal Revenue Code of 1986, the Secretary of the Treasury;

(6) all applicants for and recipients of benefits under any such program shall be notified at the time of application, and periodically thereafter, that information available through the system will be requested and utilized; and

(7) accounting systems are utilized which assure tbat programs providing data receive appropriate reimbursement from the programs utilizing the data for the costs incurred in providing the data.

(b) Applicable programs

The programs which must participate in the income and eligibility verification system are—

(1) the aid to families with dependent children program under part A of subchapter IV of this chapter;

(2) the medicaid program under subchapter XIX of this chapter;

(3) the unemployment compensation program under section 3304 of the Internal Revenue Code of 1986;

(4) the food stamp program under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.]; and

(5) any State program under a plan approved under subchapter I, X, XIV, or XVI of this chapter.

(c) Protection of applicants from improper use of information

(1) In order to protect applicants for and recipients of benefits under the programs identified in subsection (b) of this section, or under the supplemental security income program under subchapter XVI of this chapter, from the improper use of information obtained from the Secretary of the Treasury under section 6103(*l*)(7)(B) of the Internal Revenue Code of 1986, no Federal, State, or local agency receiving such information may terminate, deny, suspend, or reduce any benefits of an individual until such agency has taken appropriate steps to independently verify information relating to—

(A) the amount of the asset or income involved,

(B) whether such individual actually has (or had) access to such asset or income for his own use, and

(C) the period or periods when the individual actually had such asset or income.

(2) Such individual shall be informed by the agency of the findings made by the agency on the basis of such verified information, and shall be given an opportunity to contest such findings, in the same manner as applies to other information and findings relating to eligibility factors under the program.

(d) Citizenship or immigration status requirements; documentation; verification by Immigration and Naturalization Service; denial of benefits; hearing

The requirements of this subsection, with respect to an income and eligibility verification system of a State, are as follows:

(1)(A) The State shall require, as a condition of an individual's eligibility for benefits under any program listed in subsection (b) of this section, a declaration in writing by the individual (or, in the case of an individual who is a child, by another on the individual's behalf), under penalty of perjury, stating whether or not the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is in a satisfactery immigration status.

(B) In this subsection—

(i) in the case of the program described in subsection (b)(1) of this section, any reference to an individual's eligibility for benefits under the program shall be considered a reference to the individual's being considered a dependent child or to the individual's being treated as a caretaker relative or other person whose needs are to be taken into account in making the determination under section 602(a)(7) of this title,

(ii) in the case of the program described in subsection (b)(4) of this section—

[1] So in original. Probably should be followed by a comma.

(I) any reference to the State shall be considered a reference to the State agency, and

(II) any reference to an individual's eligibility for benefits under the program shall be considered a reference to the individual's eligibility to participate in the program as a member of a household, and

(III) the term "satisfactory immigration status" means an immigration status which does not make the individual ineligible for benefits under the applicable program.

(2) If such an individual is not a citizen or national of the United States, there must be presented either—

(A) alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number), or

(B) such other documents as the State determines constitutes reasonable evidence indicating a satisfactory immigration status.

(3) If the documentation described in paragraph (2)(A) is presented, the State shall utilize the individual's alien file or alien admission number to verify with the Immigration and Naturalization Service the individual's immigration status through an automated or other system (designated by the Service for use with States) that—

(A) utilizes the individual's name, file number, admission number, or other means permitting efficient verification, and

(B) protects the individual's privacy to the maximum degree possible.

(4) In the case of such an individual who is not a citizen or national of the United States, if, at the time of application for benefits, the statement described in paragraph (1) is submitted but the documentation required under paragraph (2) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under paragraph (3)—

(A) the State—

(i) shall provide a reasonable opportunity to submit to the Stato evidence indicating a satisfactory immigration status, and

(ii) may not delay, deny, reduce, or terminate the individual's eligibility for benefits under the program on the basis of the individual's immigration status until such a reasonable opportunity has been provided; and

(B) if there are submitted documents which the State determines constitutes reasonable evidence indicating such status—

(i) the State shall transmit to the Immigration and Naturalization Service photostatic or other similar copies of such documents for official verification,

(ii) pending such verification, the State may not delay, deny, reduce, or terminate the individual's eligibility for benefits under the program on the basis of the individual's immigration status, and

(iii) the State shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

(5) If the State determines, after complying with the requirements of paragraph (4), that such an individual is not in a satisfactory immigration status under the applicable program—

(A) the State shall deny or terminate the individual's eligibility for benefits under the program, and

(B) the applicable fair hearing process shall be made available with respect to the individual.

(e) Erroneous State citizenship or immigration status determinations; penalties not required

Each Federal agency responsible for administration of a program described in subsection (b) of this section shall not take any compliance, disallowance, penalty, or other regulatory action against a State with respect to any error in the State's determination to make an individual eligible for benefits based on citizenship or immigration status—

(1) if the State has provided such eligibility based on a verification of satisfactory immigration status by the Immigration and Naturalization Service,

(2) because the State, under subsection (d)(4)(A)(ii) of this section, was required to provide a reasonable opportunity to submit documentation,

(3) because the State, under subsection (d)(4)(B)(ii) of this section, was required to wait for the response of the Immigration and Naturalization Service to the State's request for official verification of the immigration status of the individual, or

(4) because of a fair hearing process described in subsection (d)(5)(B) of this section.

(Aug. 14, 1935, ch. 531, title XI, § 1137, as added July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2651(a), 98 Stat. 1147, and amended Oct. 21, 1986, Pub. L. 99-509, title IX, § 9101, 100 Stat. 1972; Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095; Nov. 6, 1986, Pub. L. 99-603, title I, § 121(a)(1), 100 Stat. 3384.)

REFERENCES IN TEXT

Parts A and D of subchapter IV of this chapter, referred to in subsecs. (a)(4)(B) and (b)(1), are classified to sections 601 et seq. and 651 et seq., respectively, of this title.

The Internal Revenue Code of 1986, referred to in subsecs. (a)(2), (4)(B), (5), (b)(3), and (c)(1), is classified generally to Title 26, Internal Revenue Code.

The Food Stamp Act of 1977, referred to in subsec. (b)(4), is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-603, § 121(a)(1)(A), inserted "which meets the requirements of subsection (d) of this section and" after "system" in introductory text.

Subsec. (a)(2), (4)(B). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (a)(4)(C). Pub. L. 99-509 inserted before semicolon at end ", and no State shall be required to use such information to verify the eligibility of all recipients".

Subsec. (a)(5). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" wherever appearing.

Subsec. (b). Pub. L. 99-603, § 12I(a)(I)(B), substituted "income and eligibility verification system" for "income verification system" in introductory text.

Subsecs. (b)(3), (c)(1). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsecs. (d), (e). Pub. L. 99-603, § 121(a)(1)(C), added subsecs. (d) and (e).

EFFECTIVE DATE OF 1986 AMENDMENT; USE OF VERIFICATION SYSTEM

Section 12I(c)(3), (4) of Pub. L. 99-603 provided that:

"(3) USE OF VERIFICATION SYSTEM REQUIRED IN FISCAL YEAR 1989.—Except as provided in paragraph (4), the amendments made by subsection (a) [amending sections 1320b-7 and 1436a of this title and section 1091 of Title 20, Education] take effect on October 1, 1988. States have until that date to begin complying with the requirements imposed by those amendments.

"(4) USE OF VERIFICATION SYSTEM NOT REQUIRED FOR A PROGRAM IN CERTAIN CASES.—

"(A) REPORT TO RESPECTIVE CONGRESSIONAL COMMITTEES.—With respect to each covered program (as defined in subparagraph (D)(i)), each appropriate Secretary shall examine and report to the appropriate Committees of the House of Representatives and of the Senate, by not later than April 1, 1988, concerning whether (and the extent to which)—

"(i) the application of the amendments made by subsection (a) to the program is cost-effective and otherwise appropriate, and

"(ii) there should be a waiver of the application of such amendments under subparagraph (B).

The amendments made by subsection (a) shall not apply with respect to a covered program described in subclause (II), (V), (VI), or (VII) of subparagraph (D)(i) until after the date of receipt of such report with respect to the program.

"(B) WAIVER IN CERTAIN CASES.—If, with respect to a covered program, the appropriate Secretary determines, on the Secretary's own initiative or upon an application by an administering entity and based on such information as the Secretary deems persuasive (which may include the results of the report required under subsection (d)(1) [set out as a note below] and information contained in such an application), that—

"(i) the appropriate Secretary or the administering entity has in effect an alternative system of immigration status verification which—

"(I) is as effective and timely as the system otherwise required under the amendments made by subsection (a) with respect to the program, and

"(II) provides for at least the hearing and appeals rights for beneficiaries that would be provided under the amendments made by subsection (a), or

"(ii) the costs of administration of the system otherwise required under such amendments exceed the estimated savings,

such Secretary may waive the application of such amendments to the covered program to the extent (by State or other geographic area or otherwise) that such determinations apply.

"(C) BASIS FOR DETERMINATION.—A determination under subparagraph (B)(ii) shall be based upon the appropriate Secretary's estimate of—

"(i) the number of aliens claiming benefits under the covered program in relation to the total number of claimants seeking benefits under the program,

"(ii) any savings in benefit expenditures reasonably expected to result from implementation of the verification program, and

"(iii) the labor and nonlabor costs of administration of the verification system,

the degree to which the Immigration and Naturalization Service is capable of providing timely and accurate information to the administering entity in order to permit a reliable determination of immigration status, and such other factors as such Secretary deems relevant.

"(D) DEFINITIONS.—In this paragraph:

"(i) The term 'covered program' means each of the following programs:

"(I) The aid to families with dependent children program under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.].

"(II) The medicaid program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].

"(III) Any State program under a plan approved under title I, X, XIV, or XVI of the Social Security Act [42 U.S.C. 301 et seq., 1201 et seq., 1351 et seq., or 1381 et seq., respectively].

"(IV) The unemployment compensation program under section 3304 of the Internal Revenue Code of 1954 [now 1986; 26 U.S.C. 3304].

"(V) The food stamp program under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.].

"(VI) The programs of financial assistance for housing subject to section 214 of the Housing and Community Development Act of 1980 [42 U.S.C. 1436a].

"(VII) The program of grants, loans, and work assistance under title IV of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq.].

"(ii) The term 'appropriate Secretary' means, with respect to the covered program described in—

"(I) subclauses (I) through (III) of clause (i), the Secretary of Health and Human Services;

"(II) clause (i)(IV), the Secretary of Labor;

"(III) clause (i)(V), the Secretary of Agriculture;

"(IV) clause (i)(VI), the Secretary of Housing and Urban Development; and

"(V) clause (i)(VII), the Secretary of Education.

"(iii) The term 'administering entity' means, with respect to the covered program described in—

"(I) subclause (I), (II), (III), (IV), or (V) of clause (i), the State agency responsible for the administration of the program in a State;

"(II) clause (i)(VI), the Secretary of Housing and Urban Development, a public housing agency, or another entity that determines the eligibility of an individual for financial assistance; and

"(III) clause (i)(VII), an institution of higher education involved."

EFFECTIVE DATE

Section 2651(l) of Pub. L. 98-369 provided that:

"(1) The amendments made by subsections (j) and (k) [amending section 1383 of this title and section 6103 of Title 26, Internal Revenue Code] shall become effective on the date of the enactment of this Act [July 18, 1984].

"(2) Except as otherwise specifically provided, the amendments made by subsections (a) through (i) [enacting section 1320b-7 of this title, amending sections 302, 503, 602, 1202, 1352, and 1396a of this title and section 2020 of Title 7, Agriculture, repealing section 611 of this title, and amending provisions set out as a note under section 1382 of this title] shall become effective on April 1, 1985. In the case of any State which submits a plan describing a good faith effort by such State to come into compliance with the requirements of such subsections, the Secretary of Health and

Human Services (or, in the case of the State unemployment compensation program, the Secretary of Labor, or, in the case of the food stamp program, the Secretary of Agriculture) may by waiver grant a delay in the effective date of such subsections, except that no such waiver may delay the effective date of section 1137(c) of the Social Security Act [42 U.S.C. 1320b-7(c)] (as added by subsection (a) of this section), or delay the effective date of any other provision of or added by this section beyond September 30, 1986."

IMMIGRATION AND NATURALIZATION SERVICE TO ESTABLISH VERIFICATION SYSTEM BY OCTOBER 1, 1987

Section 121(c)(1) of Pub. L. 99-603 provided that: "The Commissioner of Immigration and Naturalization shall implement a system for the verification of immigration status under paragraphs (3) and (4)(B)(i) of section 1137(d) of the Social Security Act [42 U.S.C. 1320b-7(d)(3), (4)(B)(i)] (as amended by this section) so that the system is available to all the States by not later than October 1, 1987. Such system shall not be used by the Immigration and Naturalization Service for administrative (non-criminal) immigration enforcement purposes and shall be implemented in a manner that provides for verification of immigration status without regard to the sex, color, race, religion, or nationality of the individual involved."

GENERAL ACCOUNTING OFFICE REPORTS

Section 121(d) of Pub. L. 99-603 provided that:

"(1) REPORT ON CURRENT PILOT PROJECTS.—The Comptroller General shall—

"(A) examine current pilot projects relating to the System for Alien Verification of Eligibility (SAVE) operated by, or through cooperative agreements with, the Immigration and Naturalization Service, and

"(B) report, not later than October 1, 1987, to Congress and to the Commissioner of the Immigration and Naturalization Service concerning the effectiveness of such projects and any problems with the implementation of such projects, particularly as they may apply te implementation of the system referred to in subsection (c)(1) [set out as a noto above].

"(2) REPORT ON IMPLEMENTATION OF VERIFICATION SYSTEM.—The Comptroller General shall—

"(A) monitor and analyze the implementation of such system,

"(B) report to Congress and to the appropriate Secretaries described in subsection (c)(4)(D)(ii) [set out as a note above], by not later than April 1, 1989, on such implementation, and

"(C) include in such report such recommendations for changes in the system as may be appropriate."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 302, 303, 502, 503, 602, 603, 1202, 1203, 1352, 1353, 1383, 1396a, 1396b of this title; title 7 sections 2020, 2025.

§ 1320b-8. Hospital protocols for organ procurement and standards for organ procurement agencies

(a)(1) The Secretary shall provide that a hospital meeting the requirements of subchapter XVIII or XIX of this chapter may participate in the program established under such subchapter only if—

(A) the hospital establishes written protocols for the identification of potential organ donors that—

(i) assure that families of potential organ donors are made aware of the option of organ or tissue donation and their option to decline,

(ii) encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of such families, and

(iii) require that an organ procurement agency designated by the Secretary pursuant to subsection (b)(1)(F) of this section be notified of potential organ donors; and

(B) In[1] the case of a hospital in which organ transplants are performed, the hospital is a member of, and abides by the rules and requirements of, the Organ Procurement and Transplantation Network established pursuant to section 274 of this title (in this section referred to as the "Network").

(2) For purposes of this subsection, the term "organ" means a human kidney, liver, heart, lung, pancreas, and any other human organ or tissue specified by the Secretary for purposes of this subsection.

(b)(1) The Secretary shall provide that payment may be made under subchapter XVIII or XIX of this chapter with respect to organ procurement costs attributable to payments made to an organ procurement agency only if the agency—

(A)(i) is a qualified organ procurement organization (as described in section 273(b) of this title) that is operating under a grant made under section 273(a) of this title, or (ii) has been certified or recertified by the Secretary within the previous two years as meeting the standards to be a qualified organ procurement organization (as so described);

(B) meets the requirements that are applicable under such subchapter for organ procurement agencies;

(C) meets performance-related standards prescribed by the Secretary;

(D) is a member of, and abides by the rules and requirements of, the Network;

(E) allocates organs, within its service area and nationally, in accordance with medical criteria and the policies of the Network; and

(F) is designated by the Secretary as an organ procurement organization payments to which may be treated as organ procurement costs for purposes of reimbursement under such subchapter.

(2) The Secretary may not designate more than one organ procurement organization for each service area (described in section 273(b)(1)(E) of this title) under paragraph (1)(F).

(Aug. 14, 1935, ch. 531, title XI, § 1138, as added Oct. 21, 1986, Pub. L. 99-509, title IX, § 9318(a), 100 Stat. 2009.)

EFFECTIVE DATE

Section 9318(b) of Pub. L. 99-509 provided that:

"(1) Section 1138(a) of the Social Security Act [subsec. (a) of this section] shall apply to hospitals participating in the programs under titles XVIII and XIX of such Act [subchapters XVIII and XIX of this chapter] as of October 1, 1987."

"(2) Section 1138(b) of such Act [subsec. (b) of this section] shall apply to costs of organs procured on or after October 1, 1987."

[1] So in original. Probably should be "In".

PART B—PEER REVIEW OF THE UTILIZATION AND QUALITY OF HEALTH CARE SERVICES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1301, 1395b-1, 1395h, 1395k, 1395x, 1395u, 1395y, 1395cc, 1395ff, 1395*ll*, 1395mm, 1395ww, 1396a of this title.

§ 1320c. Purpose

EFFECTIVE DATE

Section 149 of Pub. L. 97-248, as amended by Pub. L. 98-369, div. B, title III, § 2354(c)(3)(C), July 18, 1984, 98 Stat. 1102, provided that: "The amendments made by this subtitle [subtitle C, §§ 141 to 150, of title I of Pub. L. 97-248, enacting this part, amending sections 1395b-1, 1395g, 1395k, 1395*l*, 1395x, 1395y, 1395cc, 1395pp, 1396a, and 1396b of this title, and enacting provisions set out as notes under sections 1305 and 1320c of this title] shall, subject to section 159 [section 150 of Pub. L. 97-248, set out as a note below], be effective with respect to contracts entered into or renewed on or after the date of the enactment of this Act [Sept. 3, 1982]."

§ 1320c-1. "Utilization and quality control peer review organization" defined

The term "utilization and quality control peer review organization" means an entity which—

(1)(A) is composed of a substantial number of the licensed doctors of medicine and osteopathy engaged in the practice of medicine or surgery in the area and who are representative of the practicing physicians in the area, designated by the Secretary under section 1320c-2 of this title, with respect to which the entity shall perform services under this part, or (B) has available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy engaged in the practice of medicine or surgery in such area to assure that adequate peer review of the services provided by the various medical specialties and subspecialties can be assured;

(2) is able, in the judgment of the Secretary, te perform review functions required under section 1320c-3 of this title in a manner consistent with the efficient and effective administration of this part and to perform reviews of the pattern of quality of care in an area of medical practice where actual performance is measured against objective criteria which define acceptable and adequate practice; and

(3) has at least one individual who is a representative of consumers on its governing body.

(As amended Oct. 21, 1986, Pub. L. 99-509, title IX, § 0353(b)(1), 100 Stat. 2046.)

AMENDMENTS

1986—Par. (3). Pub. L. 99-509 added par. (3).

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9353(b)(2) of Pub. L. 99-509 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to contracts entered into or renewed on or after January 1, 1987."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320c-2, 1320c-3 of this title.

§ 1320c-2. Contracts with utilization and quality control peer review organizations

[*See main edition for text of (a)*]

(b) Organizations entitled to contract with Secretary

[*See main edition for text of (1)*]

(2)(A) Prior to November 15, 1984, the Secretary shall not enter into a contract under this part with any entity which is, or is affiliated with (through management, ownership, or common control), an entity (other than a self-insured employer) which directly or indirectly makes payments to any practitioner or provider whose health care services are reviewed by such entity or would be reviewed by such entity if it entered into a contract with the Secretary under this part. For purposes of this paragraph, an entity shall not be considered to be affiliated with another entity which makes payments (directly or indirectly) to any practitioner or provider, by reason of management, ownership, or common control, if the management, ownership, or common control consists only of members of the governing board being affiliated (through management, ownership, or common control) with a health maintenance organization or competitive medical plan which is an "eligible organization" as defined in section 1395mm(b) of this title.

(B) If, after November 14, 1984, the Secretary determines that there is no other entity available for an area with which the Secretary can enter into a contract under this part, the Secretary may then enter into a contract under this part with an entity described in subparagraph (A) for such area if such entity otherwise meets the requirements of this part.

(3)(A) The Secretary shall not enter into a contract under this part with any entity which is, or is affiliated with (through management, ownership, or common control), a health care facility, or association of such facilities, within the area served by such entity or which would be served by such entity if it entered into a contract with the Secretary under this part.

(B) For purposes of subparagraph (A), an entity shall not be considered to be affiliated with a health care facility or association of facilities by reason of management, ownership, or common control if the management, ownership, or common control consists only of not more than 20 percent of the members of the governing board of the entity being affiliated (through management, ownership, or common control) with one or more of such facilities or associations.

(c) Terms of contract

Each contract with an organization under this section shall provide that—

[*See main edition for text of (1) to (7)*]

(8) reimbursement shall be made to the organization on a monthly basis, with payments for any month being made not later than 15 days after the close of such month.

(d) Review prior to termination of contract; modification and termination; reviewing panel

[See main edition for text of (1) to (3)]

(4) During the period after the Secretary has given notice of intent to terminate a contract, and prior to the time that the Secretary enters into a contract with another utilization and quality control peer review organization, the Secretary may transfer review responsibilities of the organization under the contract being terminated to another utilization and quality control peer review organization, or to an intermediary or carrier having an agreement under section 1395h of this title or a contract under section 1395u of this title.

[See main edition for text of (e) and (f)]

(g) Timely provision of hospital data to peer review organizations

The Secretary shall provide that fiscal intermediaries furnish to peer review organizations, each month on a timely basis, data necessary to initiate the review process under section 1320c-3(a) of this title on a timely basis. If the Secretary determines that a fiscal intermediary is unable to furnish such data on a timely basis, the Secretary shall require the hospital to do so.

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, § 602(a), 97 Stat. 163; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2334(a), (b), 2347(c), 98 Stat. 1090, 1097; Apr. 7, 1986, Pub. L. 99-272, title IX, §§ 9402(b), 9404(a), 9406(a), 100 Stat. 200, 201; Oct. 21, 1986, Pub. L. 99-509, title IX, § 9352(a)(1), 100 Stat. 2044.)

AMENDMENTS

1986—Subsec. (b)(2)(A). Pub. L. 99-272, § 9404(a), substituted "consists ouly of members of the governing board" for "consists only of one individual member of the governing board".

Subsec. (c)(8). Pub. L. 99-272, § 9402(b), amended par. (8) generally. Prior to amendment, par. (8) read as follows: "reimbursement shall be made to the organization in accordance with the terms of the contract."

Subsec. (d)(4). Pub. L. 99-272, § 9406(a), added par. (4).

Subsec. (g). Puh. L. 99-509 added subsec. (g).

1984—Subsec. (b)(2)(A). Pub. L. 98-389, § 2347(c)(1), substituted "Prior to November 15, 1984" for "During the first twelve months in which the Secretary is entering into contracts under this section".

Pub. L. 98-369, § 2334(b), inserted "(other than a self-insured employer)" and provision that for purposes of this paragraph an entity shall not be considered to be affiliated with another entity which makes payments (directly or indirectly) to any practitioner or provider, by reason of management, ownership, or common control, if the management, ownership, or common control consists only of one individual member of the governing beard being affiliated (through management, ownership, or common control) with a health maintenanco organization or competitive medical plan which is an "eligible organization" as defined in section 1395mm(b) of this title.

Subsec. (b)(2)(B). Pub. L. 98-369, § 2347(c)(2), substituted "after November 14, 1984" for "after the expiration of the twelve-month period referred to in subparagraph (A)".

Subsec. (b)(2)(C). Pub. L. 98-369, § 2347(c)(3), struck out subpar. (C) which provided that the twelve-month period formerly referred to in subpar. (A) would be deemed to have begun not later than October 1983.

Subsec. (b)(3). Pub. L. 98-369, § 2334(a), designated existing provisions as subpar. (A) and added subpar. (B).

1983—Subsec. (b)(2)(C). Pub. L. 98-21 added subpar. (C).

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 9352(c)(1) of Pub. L. 99-509 provided that: "The Secretary of Health and Human Services shall implement the amendment made by subsection (a) [amending sections 1320c-2 and 1395h of this title] not later than 6 months after the date of the enactment of this Act [Oct. 21, 1986]."

Section 9402(c)(2) of Pub. L. 99-272 provided that: "The amendment made by subsection (b) [amending this section] shall apply to contracts entered inte or renewed on or after the date of the enactment of this Act [Apr. 7, 1986]."

Section 9404(b) of Pub. L. 99-272 provided that: "The amendment made by this section [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986]."

Section 9406(b) of Pub. L. 99-272 provided that: "The amendment made by this section [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986]."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2334(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending subsec. (b) of this section] shall become effective on the date of the enactment of this Act [July 18, 1984]."

Section 2347(d) of Pub. L. 98-369 provided that: "The provisions of, and amendments made by, this section [amending sections 1320c-2 and 1395cc of this title and enacting provisions set out as a note under section 1395cc of this title] shall become effective on the date of the enactment of this Act [July 18, 1984]."

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment hy Pub. L. 98-21 applicahle to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after Nov. 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98-21, set out as a note under section 1395ww of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320c-1, 1320c-3, 1320c-6 of this title.

§ 1320c-3. Functions of peer review organizations

(a) Review of professional activities; determination of payment; determination of review authority; consultation with professional health care practitioners; standards of health care; other duties

Any utilization and quality control peer review organization entering into a contract with the Secretary under this part must perform the following functions:

(1) The organization shall review some or all of the professional activities in the area, subject to the terms of the contract and subject to the requirements of subsection (d) of this section, of physicians and other health care practitioners and institutional and non-institutional providers of health care services in the provision of health care services and items for which payment may be made (in whole or in part) under subchapter XVIII of this chapter (including where payment is

made for such services to eligible organizations pursuant to contracts under section 1395mm of this title) for the purpose of determining whether—

[*See main edition for text of (A) to (C)*]

(2) The organization shall determine, on the basis of the review carried out under subparagraphs (A), (B), and (C) of paragraph (1), whether payment shall be made for services under subchapter XVIII of this chapter. Such determination shall constitute the conclusive determination on those issues for purposes of payment under subchapter XVIII of this chapter, except that payment may be made if—

[*See main edition for text of (A) to (D)*]

Determinations that payment should not be made by reason of subparagraph (B) of paragraph (1) shall be made only on the basis of criteria which are consistent with guidelines established by the Secretary.

[*See main edition for text of (3)*]

(4)(A) The organization shall, after consultation with the Secretary, determine the types and kinds of cases (whether by type of health care or diagnosis involved, or whether in terms of other relevant criteria relating to the provision of health care services) with respect to which such organization will, in order to most effectively carry out the purposes of this part, exercise review authority under the contract. The organization shall notify the Secretary periodically with respect to such determinations. Each peer review organization shall provide that a reasonable proportion of its activities are involved with reviewing, under paragraph (1)(B), the quality of services and that a reasonable allocation of such activities is made among the different cases and settings (including post-acute-care settings, ambulatory settings, and health maintenance organizations). In establishing such allocation, the organization shall consider (i) whether there is reason to believe that there is a particular need for reviews of particular cases or settings because of previous problems regarding quality of care, (ii) the cost of such reviews and the likely yield of such reviews in terms of number and seriousness of quality of care problems likely to be discovered as a result of such reviews, and (iii) the availability and adequacy of alternative quality review and assurance mechanisms.

(B) The contract of each organization shall provide for the review of services (including both inpatient and outpatient services) provided by eligible organizations pursuant to a contract under section 1395mm of this title for the purpose of determining whether the quality of such services meets professionally recognized standards of health care, including whether appropriate health care services have not been provided or have been provided in inappropriate settings. The previous sentence shall not apply with respect to a contract year if another entity has been awarded a contract under subparagraph (C). Under the contract the level of effort expended by the organization on reviews under this subparagraph shall be equivalent, on a per enrollee basis, to the level of effort expended by the organization on utilization and quality reviews performed with respect to individuals not enrolled with an eligible organization.

(C) The Secretary may provide, by contract under competitive procurement procedures on a State-by-State basis in up to 25 States, for the review described in subparagraph (B) by an appropriate entity (which may be a peer review organization described in that subparagraph). In selecting among States in which to conduct such competitive procurement procedures, the Secretary may not select States which, as a group, have more than 50 percent of the total number of individuals enrolled with eligible organizations under section 1395mm of this title. Under a contract with an entity under this subparagraph—

(i) the entity must be, or must meet all the requirements under section 1320c-1 of this title to be, a utilization and quality control peer review organization,

(ii) the contract must meet the requirement of section 1320c-2(b)(3) of this title, and

(iii) the level of effort expended under the contract shall be, to the extent practicable, not less than the level of effort that would otherwise be required under the third sentence of subparagraph (B) if this subparagraph did not apply.

[*See main edition for text of (5) to (7)*]

(8) The organization shall perform such duties and functions and assume such responsibilities and comply with such other requirements as may be required by this part or under regulations of the Secretary promulgated to carry out the provisions of this part or as may be required to carry out section 1395y(a)(15) of this title.

[*See main edition for text of (9) to (11)*]

(12) The organization shall perform the review, referral, and other functions required under section 1320c-13 of this title.

(13) Notwithstanding paragraph (4), the organization shall perform the review described in paragraph (1) with respect to early readmission cases to determine if the previous inpatient hospital services and the post-hospital services met professionally recognized standards of health care. Such reviews may be performed on a sample basis if the organization and the Secretary determine it to be appropriate. In this paragraph, an "early readmission case" is a case in which an individual, after discharge from a hospital, is readmitted to a hospital less than 31 days after the date of the most recent previous discharge.

(14) The organization shall conduct an appropriate review of all written complaints about the quality of services (for which payment may otherwise be made under subchapter XVIII of this chapter) not meeting profes-

sionally recognized standards of health care, if the complaint is filed with the organization by an individual entitled to benefits for such services under such subchapter (or a person acting on the individual's behalf). The organization shall inform the individual (or representative) of the organization's final disposition of the complaint. Before the organization concludes that the quality of services does not meet professionally recognized standards of health care, the organization must provide the practitioner or person concerned with reasonable notice and opportunity for discussion.

[See main edition for text of (b) and (c)]

(d) Review of ambulatory surgical procedures

Each contract under this part shall require that the utilization and quality control peer review organization's review responsibility pursuant to subsection (a)(1) of this section will include review of all ambulatory surgical procedures specified pursuant to section 1395*l*(i)(1)(A) of this title which are performed in the area, or, at the discretion of the Secretary (and except as provided in section 1320c-13(b)(4) of this title) a sample of such procedures.

(e) Review of hospital denial notices

(1) If—

(A) a hospital has determined that a patient no longer requires inpatient hospital care, and

(B) the attending physician has agreed with the hospital's determination,

the hospital may provide the patient (or the patient's representative) with a notice (meeting conditions prescribed by the Secretary under section 1395pp of this title) of the determination.

(2) If—

(A) a hospital has determined that a patient no longer requires inpatient hospital care, but

(B) the attending physician has not agreed with the hospital's determination,

the hospital may request the appropriate peer review organization to review under subsection (a) of this section the validity of the hospital's determination.

(3)(A) If a patient (or a patient's representative)—

(i) has received a notice under paragraph (1), and

(ii) requests the appropriate peer review organization te review the determination,

then, the organization shall conduct a review under subsection (a) of this section of the validity of the hospital's determination and shall provide notice (by telephone and in writing) to the patient or representative and the hospital and attending physician involved of the results of the review. Such review shall be conducted regardless of whether or not the hospital will charge for continued hospital care or whether or not the patient will be liable for payment for such continued care.

(B) If a patient (or a patient's representative) requests a review under subparagraph (A) while the patient is still an inpatient in the hospital and not later than noon of the first working day after the date the patient receives the notice under paragraph (1), then—

(i) the hospital shall provide to the appropriate peer review organization the records required to review the determination by the close of business of such first working day, and

(ii) the peer review organization must provide the notice under subparagraph (A) by not later than one full working day after the date the organization has received the request and such records.

(4) If—

(A) a request is made under paragraph (3)(A) not later than noon of the first working day after the date the patient (or patient's representative) receives the notice under paragraph (1), and

(B) the conditions described in section 1395pp(a)(2) of this title with respect to the patient or representative are met,

the hospital may not charge the patient for inpatient hospital services furnished before noon of the day after the date the patient or representative receives notice of the peer review organization's decision.

(5) In any review conducted under paragraph (2) or (3), the organization shall solicit the views of the patient involved (or the patient's representative).

(f) Identification of methods for identifying cases of substandard care

The Secretary, in consultation with appropriate experts, shall identify methods that would be available to assist peer review organizations (under subsection (a)(4) of this section) in identifying those cases which are more likely than others to be associated with a quality of services which does not meet professionally recognized standards of health care.

(As amended Apr. 7, 1986, Pub. L. 99-272, title IX, §§ 9307(b), 9401(a), 9403(a), 9405(a), 100 Stat. 193, 196, 200, 201; Oct. 21, 1986, Pub. L. 99-509, title IX, §§ 9343(d), 9351(a), 9352(b), 9353(a)(1)-(3), (c)(1), 100 Stat. 2040, 2043, 2044-2047.)

AMENDMENTS

1986—Subsec. (a)(1). Pub. L. 99-509, § 9343(d)(1), inserted "and subject to the requirements of subsection (d) of this section" after "subject to the terms of the contract" in introductory provisions.

Pub. L. 99-272, § 9405(a), inserted "(including where payment is made for such services to eligible organizations pursuant to contracts under section 1395mm of this title)" after "subchapter XVIII of this chapter" in introductory provisions.

Subsec. (a)(2). Pub. L. 99-272, § 9403(a), in introductory provisions substituted "subparagraphs (A), (B), and (C)" for "subparagraphs (A) and (C)", and following subpar. (D) inserted provision that determinations that payment should not be made by reason of subpar. (B) of par. (1) shall be made only on the basis of criteria which are consistent with guidelines established by the Secretary.

Subsec. (a)(4)(A). Pub. L. 99-509, § 9353(a)(1), inserted at end "Each peer review organization shall provide that a reasonable proportion of its activities are in-

volved with reviewing, under paragraph (1)(B), the quality of services and that a reasonable allocation of such activities is made among the different cases and settings (including post-acute-care settings, ambulatory settings, and health maintenance organizations). In establishing such allocation, the organization shall consider (i) whether there is reason to believe that there is a particular need for reviews of particular cases or settings because of previous problems regarding quality of care, (ii) the cost of such reviews and the likely yield of such reviews in terms of number and seriousness of quality of care problems likely to be discovered as a result of such reviews, and (iii) the availability and adequacy of alternative quality review and assurance mechanisms."

Pub. L. 99-509, § 9353(a)(2)(A), inserted "(A)" after "(4)".

Subsec. (a)(4)(B). Pub. L. 99-509, § 9353(a)(2)(C), inserted at end "Under the contract the level of effort expended by the organization on reviews under this subparagraph shall be equivalent, on a per enrollee basis, to the level of effort expended by the organization on utilization and quality reviews performed with respect to individuals not enrolled with an eligible organization."

Pub. L. 99-509, § 9353(a)(2)(B), added subpar. (B).

Subsec. (a)(4)(C). Pub. L. 99-509, § 9353(a)(2)(D), added subpar. (C).

Subsec. (a)(8). Pub. L. 99-272, § 9307(b), inserted "or as may be required to carry out section 1395y(a)(15) of this title" before the period at end.

Subsec. (a)(12). Pub. L. 99-272, § 9401(a), added par. (12).

Subsec. (a)(13). Pub. L. 99-509, § 9352(b), added par. (13).

Subsec. (a)(14). Pub. L. 99-509, § 9353(c)(1), added par. (14).

Subsec. (d). Pub. L. 99-509, § 9343(d)(2), added subsec. (d).

Subsec. (e). Pub. L. 99-509, § 9351(a), added subsec. (e).

Subsec. (f). Pub. L. 99-509, § 9353(a)(3), added subsec. (f).

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 9343(d) of Pub. L. 99-509 applicable to services furnished after June 30, 1987, see section 9343(h)(2) of Pub. L. 99-509, set out as a note under section 1395l of this title.

Section 9351(b) of Pub. L. 99-509 provided that:

"(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to denial notices furnished by hospitals to individuals on or after the first day of the first month that begins more than 30 days after the date of the enactment of this Act [Oct. 21, 1986].

"(2) Section 1154(e)(4) of the Social Security Act [subsec. (e)(4) of this section] (as added by the amendment made by subsection (a)) shall take effect on the date of the enactment of this Act [Oct. 21, 1986]."

Section 9352(c)(2) of Pub. L. 99-509 provided that: "The amendment made by subsection (b) [amending this section] shall apply to contracts entered into or renewed on or after January 1, 1987, except that in applying such amendment before January 1, 1989, the term 'post-hospital services' does not include physicians' services, other than physicians' services furnished in a hospital, other inpatient facility, ambulatory surgical center, or rural health clinic."

Section 9353(a)(6) of Pub. L. 99-509 provided that:

"(A)(i) Except as provided in clause (ii), the amendments made by paragraphs (1) and (2)(D) [amending this section] shall apply to contracts as of January 1, 1987.

"(ii) The amendment made by paragraph (1) shall not be construed as requiring, before January 1, 1989, the review of physicians' services, other than physicians' services furnished in a hospital, other inpatient facility, ambulatory surgical center, or rural health clinic.

"(B) The amendment made by paragraph (2)(B) [amending this section] shall apply to contracts as of April 1, 1987.

"(C) The amendment made by paragraph (2)(C) [amending this section] shall apply to review activities conducted by organizations on or after January 1, 1988.

"(D) The amendment made by paragraph (3) [amending this section] becomes effective on the date of the enactment of this Act [Oct. 21, 1986]."

Section 9353(c)(2) of Pub. L. 99-509 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to complaints received on or after the first day of the first month that begins more than 9 months after the date of the enactment of this Act [Oct. 21, 1986]."

Section 9307(e) of Pub. L. 99-272 provided that: "The amendments made by this section [amending sections 1320c-3, 1395u, and 1395y of this title] shall apply to services performed on or after April 1, 1986."

Section 9401(d) of Pub. L. 99-272 provided that: "The amendments made by subsection (a) [amending this section] shall apply to items and services furnished on or after January 1, 1987. The Secretary of Health and Human Services shall provide for such modification of contracts under part B of title XI of the Social Security Act [this part] that are in effect on that date as may be necessary to effect these amendments on a timely basis."

Section 9403(c) of Pub. L. 99-272 provided that: "The amendments made by this section [amending sections 1320c-3 and 1395cc of this title] shall become effective on the date of the enactment of this Act [Apr. 7, 1986]."

Section 9405(b) of Pub. L. 99-272, as amended by Pub. L. 99-509, title IX, § 9353(a)(5), Oct. 21, 1986, 100 Stat. 2046, provided that: "The amendinent made by this section [amending this section] shall apply to items and services furnished on or after April 1, 1987."

REVIEW AND ANALYSIS OF VARIATIONS IN UTILIZATION OF HOSPITAL AND OTHER HEALTH CARE SERVICES

Section 9353(a)(4) of Pub. L. 99-509 provided that: "The Secretary of Health and Human Services shall provide, to at least 12 utilization and quality control peer review organizations with contracts under part B of title XI of the Social Security Act [this part], data and data processing assistance to allow each of these organizations to review and analyze small-area variations, in the service area of the organization, in the utilization of hospital and other health care services for which payment is made under title XVIII of such Act [subchapter XVIII of this chapter]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320c-1, 1320c-2, 1320c-7, 1320c-13, 1395cc, 1895mm of this title.

§ 1320c-9. Prohibition against disclosure of information

[See main edition for text of (a)]

(b) Disclosure of information permitted

An organization having a contract with the Secretary under this part shall provide in accordance with procedures and safeguards established by the Secretary, data and information—

(1) which may identify specific providers or practitioners as may be necessary—

[See main edition for text of (A) and (B)]

(C) to assist appropriate State agencies recognized by the Secretary as having responsibility for licensing or certification of

providers or practitioners or to assist national accreditation bodies acting pursuant to section 1395bb of this title in accrediting providers for purposes of meeting the conditions described in subchapter XVIII of this chapter, which data and information shall be provided by the peer review organization to any such agency or body at the request of such agency or body relating to a specific case or to a possible pattern of substandard care, but only to the extent that such data and information are required by the agency or body to carry out its respective function which is within the jurisdiction of the agency or body nnder State law or under section 1395bb of this title; [2]

[*See main edition for text of* (2)]

The penalty provided in subsection (c) of this section shall not apply to the disclosure of any information received under this subsection, except that such penalty shall apply to the disclosure (by the agency receiving such information) of any such information described in paragraph (1) unless such disclosure is made in a judicial, administrative, or other formal legal proceeding resulting from an investigation conducted by the agency receiving the information. An organization may require payment of a reasonable fee for providing information under this subsection in response to a request for such information.

[*See main edition for text of* (c) *and* (d)]

(As amended Oct. 21, 1986, Pub. L. 99-509, title IX, § 9353(d)(1), 100 Stat. 2047.)

AMENDMENTS

1986—Subsec. (b)(1)(C). Pub. L. 99-509 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "to assist appropriate State agencies recognized by the Secretary as having responsibility for licensing or certification of providers or practitioners, which data and information shall be provided by the peer review organization to any such agency at the request of such agency relating to a specific case, but only to the extent that such data and information is required by the agency in carrying out a function which is within the jurisdiction of such agency under State law; and".

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9353(d)(2) of Pub. L. 99-509 provided that: "The amendments made by paragraph (1) [amending this section] shall apply to requests for data and information made on and after the end of the 6-month period beginning on the date of the enactment of this Act [Oct. 21, 1986]."

§ 1320c-13. 100 percent peer review for certain surgical procedures

(a) 100 percent review function

(1) In general

Each utilization and quality control peer review organization shall perform the review described in section 1320c-3(a)(1) of this title for 100 percent of the surgical procedures specified pursuant to subsection (b) of this section.

(2) Timing of review

(A) In general

Except as provided in subparagraph (B), the review required under paragraph (1) shall be performed—

(i) before the performance of the procedure, in the case of an outpatient procedure, or

(ii) before admission to the hospital for the provision of services in connection with the procedure, in the case of a procedure performed on an inpatient basis.

(B) Exception

The review with respect to a procedure need not be performed by the time specified in subparagraph (A) in cases of a medical emergency and under such other circumstances as the Secretary may specify.

(b) Specification of surgical procedures and qualified reviewers

(1) In contract

The contract with each organization under this part shall specify at least 10 surgical procedures to be covered under this section.

(2) Selection guidelines

(A) In general

The specification of procedures shall be consistent with selection guidelines established by the Secretary under paragraph (3). The procedures specified shall be included among the surgical procedures which the Secretary has identified as reasonably being able to meet such guidelines.

(B) Exception

The Secretary may permit an organization to include among the procedures specified under paragraph (1) procedures not identified by the Secretary under paragraph (2)(A) if to do so would be cost effective and consistent with the criteria described in paragraph (3).

(3) Criteria

The Secretary shall establish such guidelines and identify such surgical procedures consistent with the following criteria:

(A) The procedure is one which generally can be postponed without undue risk to the patient.

(B) The procedure is a high volume procedure among patients who are covered under the programs established under subchapter XVIII of this chapter or is a high cost procedure.

(C) The procedure has a comparatively high rate of nonconfirmation upon examination by another qualified physician, there is substantial geographic variation in the rates of performance of the procedure, or there are other reasons why pre-procedure review for 100 percent of the procedures would be cost effective.

[2] So in original. Probably should be followed by "and".

(4) Qualifications for physicians providing second opinions

(A) In general

The Secretary shall specify, for each procedure identified under paragraphs (2) and (3), the type or types of board certified or board eligible specialists who may conduct a second opinion, required under subsection (c) of this section, based upon the nature of the procedure.

(B) Freedom of choice of patient to choose physician

Subject to subparagraphs (C) and (D), the patient may choose any physician of the proper specialty under subparagraph (A) to provide the second opinion.

(C) Physicians prohibited from providing second opinions

For purposes of this section, a second opinion may not be provided by a physician who is affiliated with, or has a common financial interest with, the physician who rendered the first opinion that the procedure was necessary.

(D) Restricted list

In accordance with guidelines of the Secretary, an organization may disqualify a physician from providing a second opinion under this section because of the gross unreliability of the second opinions provided.

(c) Requiring a second opinion in certain cases

(1) Determinations by organization

In the case of a review performed pursuant to subsection (a) of this section, the organization shall determine, based on such review, that the surgical procedure—

(A) is reasonable and medically necessary,

(B) is not reasonable and medically necessary, or

(C) may be considered reasonable and necessary, but, because of questions as to the medical appropriateness of performing the procedure, it is appropriate to require the patient to seek a second opinion as to the necessity and appropriateness of performing the procedure before the performance of the procedure.

The Secretary shall develop appropriate measures to ensure that second opinions are only required in situations where a second opinion is needed to resolve outstanding uncertainties as to the medical necessity of the procedure. The organization shall notify, in accordance with section 1320c-3(a)(3) of this title, the physician, patient, and hospital or other entity furnishing the service, in the event of a determination under subparagraph (B) or (C) of this paragraph.

(2) Prohibition of payment if required second opinion not provided

No payment may be made under part A or part B of subchapter XVIII of this chapter with respect to items or services furnished in connection with a surgical procedure for which there is a determination described in paragraph (1)(C), unless the individual undergoing the procedure obtains the second opinion required under that paragraph. The second opinion need not necessarily agree with the first opinion in order for payment to be made.

(3) Exceptions for elective second opinions

Paragraphs (1)(C) and (2) shall not apply to a surgical procedure if—

(A) a delay in providing the procedure would result in a risk to the patient;

(B) no physician is available (within such reasonable limits as the Secretary shall specify) who is (i) qualified to provide the second opinion, and (ii) a participating physician or a physician who has agreed to accept assignment for the second opinion; or

(C) the procedure is to be performed on a patient who is a member of a health maintenance organization or competitive medical plan having a risk-sharing contract with the Secretary under section 1395mm of this title.

(d) Referral mechanism for second opinions

(1) Acting as referral center

Each organization shall serve as a referral center for second opinions required under this section.

(2) Referral of patient

The organization shall maintain a list of physicians qualified to provide a second opinion and shall advise the patient as to which physicians are participating physicians (within the meaning of section 1395u(h) of this title) and which physicians have agreed to accept assignment to perform second opinions. The organization shall assist patients in referral to a qualified physician of the appropriate specialty for purposes of providing the opinion.

(3) Forwarding of relevant medical records

Each peer review organization shall, if the patient seeking the second opinion so requests, obtain the relevant medical records from the physician who rendered the first opinion that the procedure was necessary, and provide the relevant information to the physician selected by the patient to render the second opinion.

(e) Notice to physicians, hospitals, and beneficiaries

The Secretary shall assure that notice is provided to physicians, hospitals, ambulatory surgical centers, and beneficiaries respecting the activities under this section, including the applicable list of surgical procedures specified under this section.

(Aug. 14, 1935, ch. 531, title XI, § 1164, as added Apr. 7, 1986, Pub. L. 99-272, title IX, § 9401(b), 100 Stat. 196, and amended Oct. 22, 1986, Pub. L. 99-514, title XVIII, § 1895(b)(17), 100 Stat. 2934.)

REFERENCES IN TEXT

Parts A and B of subchapter XVIII of this chapter, referred to in subsec. (c)(2), are classified to sections

1395c et seq. and 1395j et seq., respectively, of this title.

PRIOR PROVISIONS

A prior section 1320c-13, act Aug. 14, 1935, ch. 531, title XI, § 1164, as added Oct. 30, 1972, Pub. L. 92-603, title II, § 249F(b), 86 Stat. 1442, which related to professional standards review requirements applicable to certain State programs, was repealed by Pub. L. 97-35, title XXI, § 2113(l), Aug. 13, 1981, 95 Stat. 795, applicable to agreements with Professional Standards Review Organizations entered into on or after Oct. 1, 1981.

AMENDMENTS

1986—Subsec. (b)(4)(B). Pub. L. 99-514 substituted "subparagraphs" for "paragraphs".

EFFECTIVE DATE OF 1986 AMENDMENT

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.

STUDY OF RESULTS OF PEER REVIEW OF SURGICAL PROCEDURES; REPORT TO CONGRESS

Section 9401(e) of Pub. L. 99-272 provided that: "The Secretary of Health and Human Services shall conduct a study of the results of the amendments made by this section [enacting this section, amending sections 1320c-3, 1395*l*, 1395y, and 1395cc of this title, and enacting provisions set out as a note under section 1320c-3 of this title], and shall report the results of the study to the Congress within 36 months after the date of the enactment of this Act [Apr. 7, 1986]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320c-3, 1395*l*, 1395y, 1395cc of this title.

SUBCHAPTER XII—ADVANCES TO STATE UNEMPLOYMENT FUNDS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 503, 1103 of this title; title 2 section 906; title 26 sections 3302, 3304.

§ 1322. Repayment by State; certification; transfer; interest on loan

[*See main edition for text of* (a)]

(b)(1) Except as otherwise provided in this subsection, each State shall pay interest on any advance made to such State under section 1321 of this title. Interest so payable with respect to periods during any calendar year shall be at the rate determined under paragraph (4) for such calendar year.

(2) No interest shall be required to be paid under paragraph (1) with respect to any advance or advances made during any calendar year if—

(A) such advances are repaid in full before the close of September 30 of the calendar year in which the advances were made, and

(B) no other advance was made to such State under section 1321 of this title during such calendar year and after the date on which the repayment of the advances was completed.

(3)(A) Interest payable under paragraph (1) which was attributable to periods during any fiscal year shall be paid by the State to the Secretary of the Treasury prior to the first day of the following fiscal year. If interest is payable under paragraph (1) on any advance (hereinafter in this subparagraph referred to as the "first advance") by reason of another advance made to such State after September 30 of the calendar year in which the first advance was made, interest on such first advance attributable to periods before such September 30 shall be paid not later than the day after the date on which the other advance was made.

[*See main edition for text of* (B)]

(C)(i) In the case of any State which meets the requirements of clause (ii) for any calendar year, any interest otherwise required to be paid under this subsection during such calendar year shall be paid as follows—

[*See main edition for text of* (I) *and* (II)]

No interest shall accrue on such deferred interest.

[*See main edition for text of* (ii), (4)]

(5) Interest required to be paid under paragraph (1) shall not be paid (directly or indirectly) by a State from amounts in its unemployment fund. If the Secretary of Labor determines that any State action results in the paying of such interest directly or indirectly (by an equivalent reduction in State unemployment taxes or otherwise) from such unemployment fund, the Secretary of Labor shall not certify such State's unemployment compensation law under section 3304 of the Internal Revenue Code of 1986. Such noncertification shall be made in accordance with section 3304(c) of such Code.

[*See main edition for text of* (6)]

(7) This subsection shall only apply to advances made on or after April 1, 1982.

(8)(A) With respect to interest due under this section on September 30 of 1983, 1984, or 1985 (other than interest previously deferred under paragraph (3)(C)), a State may pay 80 percent of such interest in four annual installments of at least 20 percent beginning with the year after the year in which it is otherwise due, if such State meets the criteria of subparagraph (B). No interest shall accrue on such deferred interest.

(B) To meet the criteria of this subparagraph a State must—

(i) have taken no action since October 1, 1982, which would reduce its net unemployment tax effort or the net solvency of its unemployment system (as determined for purposes of section 3302(f) of the Internal Revenue Code of 1986); and

(ii)(I) have taken an action (as certified by the Secretary of Labor) after March 31, 1982, which would have increased revenue liabilities and decreased benefits under the State's unemployment compensation system (hereinafter referred to as a "solvency effort") by a combined total of the applicable percentage (as compared to such revenues and benefits as

would have been in effect without such State action) for the calendar year for which the deferral is requested; or

(II) have had, for taxable year 1982, an average unemployment tax rate which was equal to or greater than 2.0 percent of the total of the wages (as determined without any limitation on amount) attributable to such State subject to contribution under the State unemployment compensation law with respect to such taxable year.

In the case of the first year for which there is a deferral (over a 4-year period) of the interest otherwise payable for such year, the applicable percentage shall be 25 percent. In the case of the second such year, the applicable percentage shall be 35 percent. In the case of the third such year, the applicable percentage shall be 50 percent.

(C)(i) The base year is the first year for which deferral under this provision is requested and subsequently granted. The Secretary of Labor shall estimate the unemployment rate for the base year. To determine whether a State meets the requirements of subparagraph (B)(ii)(I), the Secretary of Labor shall determine the percentage by which the benefits and taxes in the base year with the application of the action referred to in subparagraph (B)(ii)(I) are lower or greater, as the case may be, than such benefits and taxes would have been without the application of such action. In making this determination, the Secretary shall deem the application of the action referred to in subparagraph (B)(ii)(I) to have been effective for the base year to the same extent as such action is effective for the year following the year for which the deferral is sought. Once a deferral is approved under clause (ii)(I) of subparagraph (B) a State must continue to maintain its solvency effort. Failure to do so shall result in the State being required to make immediate payment of all deferred interest.

(ii) Increases in the taxable wage base from $6,000 to $7,000 or increases after 1984 in the maximum tax rate to 5.4 percent shall not be counted for purposes of meeting the requirement of subparagraph (B).

(D) In the case of a State which produces a solvency effort of 50 percent, 80 percent, and 90 percent rather than the 25 percent, 35 percent, and 50 percent required under subparagraph (B), the interest shall be computed at an interest rate which is 1 percentage point less than the otherwise applicable interest rate.

(9) Any interest otherwise due from a State on September 30 of a calendar year after 1982 may be deferred (and no interest shall accrue on such deferred interest) for a grace period of not to exceed 9 months if, for the most recent 12-month period for which data are available before the date such interest is otherwise due, the State had an average total unemployment rate of 13.5 percent or greater.

(As amended Apr. 20, 1983, Pub. L. 98-21, title V, §§ 511, 514, 97 Stat. 144, 147; Oct. 11, 1983, Pub. L. 98-118, § 5(a), 97 Stat. 804; Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (b)(5), (8)(B)(i), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1986—Subsec. (b)(5), (8)(B)(i). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1983—Subsec. (b)(2). Pub. L. 98-118, § 5(a)(1), substituted "advance or advances" for "advance" in provisions preceding subpar. (A).

Subsec. (b)(2)(A). Pub. L. 98-118, § 5(a)(2), (3), substituted "advances are" for "advance is" and "advances were" for "advance was".

Subsec. (b)(2)(B). Pub. L. 98-118, § 5(a)(4), substituted "advances was completed" for "advance was completed".

Subsec. (b)(3)(A). Pub. L. 98-21, § 514, which directed substitution of "prior to" for "not later than" was executed, as the probable intent of Congress, by making that substitution the first time the phrase appeared following "Secretary of Treasury" and not the second time that phrase appeared.

Subsec. (b)(3)(C)(i). Pub. L. 98-21, § 511(c), substituted, after subcl. II, provision that no interest shall accrue on such deferred interest for provision that any interest the time for payment of which was deferred under this subparagraph would bear interest in the same manner as if it had been an advance made on the day on which it would have been required to be paid but for this subparagraph.

Subsec. (b)(7). Pub. L. 98-21, § 511(b), struck out ", and before January 1, 1988" after "April 1, 1982".

Subsec. (b)(8), (9). Pub. L. 98-21, § 511(a), added pars. (8) and (9).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 5(b) of Pub. L. 98-118 provided that: "The amendments made by this section [amending subsec. (b)(2) of this section] shall apply to advances made on or after April 1, 1982."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1321 of this title; title 26 section 3302.

§ 1323. Repayable advances to Federal Unemployment Account

There are hereby authorized to be appropriated to the Federal unemployment account, as repayable advances (without interest), such sums as may be necessary to carry out the purposes of this subchapter. Amounts appropriated as repayable advances shall be repaid, without interest, by transfers from the Federal unemployment account to the general fund of the Treasury, at such times as the amount in the Federal unemployment account is determined by the Secretary of the Treasury, in consultation with the Secretary of Labor, to be adequate for such purpose. Any amount transferred as a repayment under this section shall be credited against, and shall operate to reduce, any balance of advances repayable under this section. Whenever, after the application of sections 1101(f)(3) and 1102(a) of this title with respect to the excess in the employment security administration account as of the close of any fiscal year, there remains any portion of such excess, so much of such remainder as does not exceed the balance of advances made pursuant to this section shall be transferred to the general fund of the Treasury and shall be credited

against, and shall operate to reduce, such balance of advances.

(As amended Oct. 24, 1983, Pub. L. 98-135, title II, § 205(a), 97 Stat. 861.)

AMENDMENTS

1983—Pub. L. 98-135 inserted provision requiring that amounts appropriated as repayable advances be repaid, without interest, by transfers from the Federal unemployment account to the general fund of the Treasury, at such times as the amount in the Federal unemployment account is determined by the Secretary of the Treasury, in consultation with the Secretary of Labor, to be adequate for such purpose, and that any amount transferred as a repayment under this section be credited against, and operate to reduce, any balance of advances repayable under this section.

RETRANSFER OF AMOUNTS TRANSFERRED FROM FEDERAL UNEMPLOYMENT ACCOUNT TO EMPLOYMENT SECURITY ADMINISTRATION ACCOUNT AS OF SEPTEMBER 30, 1983

Section 205(b) of Pub. L. 98-135 provided that: "Any amounts transferred from the Federal unemployment account to the employment security administration account as of September 30, 1983, shall be transferred back to the Federal unemployment account."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1103, 1104 of this title; title 2 section 906.

SUBCHAPTER XIII—RECONVERSION UNEMPLOYMENT BENEFITS FOR SEAMEN

§§ 1331 to 1336. Repealed. Pub. L. 98-369, div. B, title VI, § 2663(f), July 18, 1984, 98 Stat. 1168

Section 1331, act Aug. 14, 1935, ch. 531, title XIII, § 1301, as added Aug. 10, 1946, ch. 951, title III, § 306, 60 Stat. 982, and amended 1949 Reorg. Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065, provided for administration of this chapter by Secretary of Labor.

Section 1332, act Aug. 14, 1935, ch. 531, title XIII, § 1302, as added Aug. 10, 1946, ch. 951, title III, § 306, 60 Stat. 982, and amended July 16, 1949, ch. 342, §§ 1-3, 63 Stat. 445, defined "reconversion period", "compensation", "Federal maritime service", and "Federal maritime wages".

Section 1333, act Aug. 14, 1935, ch. 531, title XIII, § 1303, as added Aug. 10, 1946, ch. 951, title III, § 306, 60 Stat. 982, and amended 1949 Reorg. Plan No. 2, § 1, eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065, related to compensation for seamen, agreements with states, payments in absence of agreements, wage information, and determination of wages.

Section 1334, act Aug. 14, 1935, ch. 531, title XIII, § 1304, as added Aug. 10, 1946, ch. 951, title III, § 306, 60 Stat. 982, and amended 1949 Reorg. Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065, related to review of determinations and reports.

Section 1335, act Aug. 14, 1935, ch. 531, title XIII, § 1305, as added Aug. 10, 1946, ch. 951, title III, § 306, 60 Stat. 982, and amended 1949 Reorg. Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065, related to payments to States, certification of such payments by Secretary of Labor to Secretary of the Treasury, and return of unused funds.

Section 1336, act Aug. 14, 1935, ch. 531, title XIII, § 1306, as added Aug. 10, 1946, ch. 951, title III, § 306, 60 Stat. 982, and amended 1949 Reorg. Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065, related to penalties.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective July 18, 1964, but such repeal shall not be construed as changing or affecting any right, liability, status, or interpretation which existed before that date, see section 2664(b) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 401 of this title.

SUBCHAPTER XIV—GRANTS TO STATES FOR AID TO THE PERMANENTLY AND TOTALLY DISABLED

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 426, 602, 671, 1301, 1306a, 1308, 1309, 1311, 1315, 1316, 1316, 1319, 1320b-2, 1320b-3, 1320b-7, 1382, 1382c, 1395v, 1396a, 1396b, 1396d of this title; title 7 sections 2012, 2014; title 8 section 1255a; title 26 section 6103.

§ 1352. State plans for aid to the permanently and totally disabled

(a) A State plan for aid to the permanently and totally disabled must (1) except to the extent permitted by the Secretary with respect to services, provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administor the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide (A) for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to the permanently and totally disabled is denied or is not acted upon with reasonable promptness, and (B) that if the State plan is administered in each of the political subdivisions of the State by a local agency and such local agency provides a hearing at which evidence may be presented prior to a hearing before the State agency, such local agency may put into effect immediately upon issuance its decision upon the matter considered at such hearing; (5) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; (6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; (7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved

under section 302 of this title, aid to families with dependent children under the State plan approved under section 602 of this title, or aid to the blind under the State plan approved under section 1202 of this title; (8) provide that the State agency shall, in determining need, take into consideration any other income and resources of an individual claiming aid to the permanently and totally disabled, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination, (A) the State agency may disregard not more than $7.50 of any income, (B) of the first $80 per month of additional income which is earned the State agency may disregard not more than the first $20 thereof plus one-half of the remainder, and (C) the State agency may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the case of an individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, but only with respect to the part or parts of such period during substantially all of which he is actually undergoing vocational rehabilitation; (9) provide safeguards which permit the use or disclosure of information concerning applicants or recipients only (A) to public officials who require such information in connection with their official duties, or (B) to other persons for purposes directly connected with the administration of the State plan; (10) provide that all individuals wishing to make application for aid to the permanently and totally disabled shall have opportunity to do so, and that aid to the permanently and totally disabled shall be furnished with reasonable promptness to all eligible individuals; (11) effective July 1, 1953, provide, if the plan includes payments to individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; (12) provide a description of the services (if any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for and recipients of aid to the permanently and totally disabled to help them attain self-support or self-care, including a description of the steps taken te assure, in the provision of such services, maximum utilization of other agencies providing similar or related services; and (13) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b-7 of this title.

[*See main edition for text of* (*b*)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2651(g), 98 Stat. 1150.)

AMENDMENTS

1984—Subsec. (a)(13). Puh. L. 98-369 added cl. (13).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(l)(2) of Pub. L. 98-369, set out as an Effective Date note under section 1320b-7 of this title.

§ 1353. Payments to States

(a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the permanently and totally disabled, for each quarter, beginning with the quarter commencing October 1, 1958—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) in the case of any State, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health and Human Services for the proper and official administration of the State plan—

[*See main edition for text of* (*A*)]

(B) 100 percent of so much of such expenditures as are for the costs of the implementation and operation of the immigration status verification system described in section 1320b-7(d) of this title; plus

(C) one-half of the remainder of such expenditures.

[*See main edition for text of* (*b*)]

(As amended Nov. 6, 1986, Pub. L. 99-603, title I, § 121(b)(4), 100 Stat. 3391.)

AMENDMENTS

1986—Subsec. (a)(3)(B), (C). Pub. L. 99-603 added subpar. (B) and redesignated former subpar. (B) as (C).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-603 effective Oct. 1, 1987, see section 121(c)(2) of Pub. L. 99-603, set out as a note under section 502 of this title.

SUBCHAPTER XVI—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 401, 404, 428, 602, 612, 871, 673, 701, 909, 1301, 1306a, 1308, 1309, 1310, 1311, 1315, 1316, 1318, 1319, 1320a-8, 1320b-2, 1320b-3, 1320b-6, 1320b-7, 1382, 1382c, 1395v, 1395z, 1395ww, 1396a, 1396b, 1396d, 1396p, 1997, 3013, 6862, 6624, 11201, 11291 of this title; title 7 sections 2012, 2014, 2015, 2017, 2026; title 8 sections 1255a, 1522; title 26 sections 51, 6103; title 29 section 762a; title 31 section 3803; title 48 section 1421q.

§ 1381a. Basic entitlement to benefits

Every aged, blind, or disabled individual who is determined under part A of this subchapter to be eligible on the basis of his income and resources shall, in accordance with and subject to the provisions of this subchapter, be paid benefits by the Secretary of Health and Human Services.

(Aug. 14, 1935, ch. 531, title XVI, § 1602, as added Oct. 30, 1972, Pub. L. 92-603, title III, § 301, 86 Stat. 1465, and amended July 18, 1984,

Pub. L. 98-369, div. B, title VI, § 2663(j)(2)(E), 98 Stat. 1170.)

AMENDMENTS

1984—Pub. L. 98-369 substituted "Health and Human Services" for "Health, Education, and Welfare".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

PART A—DETERMINATION OF BENEFITS

§ 1382. Eligibility for benefits

(a) "Eligible individual" defined

(1) Each aged, blind, or disabled individual who does not have an eligible spouse and—

[*See main edition for text of (A)*]

(B) whose resources, other than resources excluded pursuant to section 1382b(a) of this title, are not more than (i) in case such individual has a spouse with whom he is living, the applicable amount determined under paragraph (3)(A), or (ii) in case such individual has no spouse with whom he is living, the applicable amount determined under paragraph (3)(B),

shall be an eligible individual for purposes of this subchapter.

(2) Each aged, blind, or disabled individual who has an eligible spouse and—

[*See main edition for text of (A)*]

(B) whose resources (together with the resources of such spouse), other than resources excluded pursuant to section 1382b(a) of this title, are not more than the applicable amount determined under paragraph (3)(A),

shall be an eligible individual for purposes of this subchapter.

(3)(A) The dollar amount referred to in clause (i) of paragraph (1)(B), and in paragraph (2)(B), shall be $2,250 prior to January 1, 1985, and shall be increased to $2,400 on January 1, 1985, to $2,550 on January 1, 1986, to $2,700 on January 1, 1987, to $2,850 on January 1, 1988, and to $3,000 on January 1, 1989.

(B) The dollar amount referred to in clause (ii) of paragraph (1)(B), shall be $1,500 prior to January 1, 1985, and shall be increased to $1,600 on January 1, 1985, to $1,700 on January 1, 1986, to $1,800 on January 1, 1987, to $1,900 on January 1, 1988, and to $2,000 on January 1, 1989.

[*See main edition for text of (b)*]

(c) Period for determination of benefits

(1) An individual's eligibility for a benefit under this subchapter for a month shall be determined on the basis of the individual's (and eligible spouse's, if any) income, resources, and other relevant characteristics in such month, and, except as provided in paragraphs (2), (3), and (4), the amount of such benefit shall be determined for such month on the basis of income and other characteristics in the first or, if the Secretary so determines, second month preceding such month. Eligibility for and the amount of such benefits shall be redetermined at such time or times as may be provided by the Secretary.

[*See main edition for text of (2) to (6)*]

(d) Limitation on amount of gross income earned; "gross income" defined

The Secretary may prescribe the circumstances under which, consistently with the purposes of this subchapter, the gross income from a trade or business (including farming) will be considered sufficiently large to make an individual ineligible for benefits under this subchapter. For purposes of this subsection, the term "gross income" has the same meaning as when used in chapter 1 of the Internal Revenue Code of 1986.

(e) Limitation on eligibility of certain individuals

(1)(A) Except as provided in subparagraphs (B), (C), (D), and (E), no person shall be an eligible individual or eligible spouse for purposes of this subchapter with respect to any month if throughout such month he is an inmate of a public institution.

(B) In any case where an eligible individual or his eligible spouse (if any) is, throughout any month, in a hospital, extended care facility, nursing home, or intermediate care facility receiving payments (with respect te such individual or spouse) under a State plan approved under subchapter XIX of this chapter, the benefit under this subchapter for such individual for such month shall be payable (subject to subparagraph (E))—

[*See main edition for text of (i) to (iii), (C)*]

(D) A person may be an eligible individual or eligible spouse for purposes of this subchapter with respect to any month throughout which he is a resident of a public emergency shelter for the homeless (as defined in regulations which shall be prescribed by the Secretary); except that no person shall be an eligible individual or eligible spouse by reason of this subparagraph more than three months in any 12-month period.

(E) Notwithstanding subparagraphs (A) and (B), any individual who—

(i)(I) is an inmate of a public institution, the primary purpose of which is the provision of medical or psychiatric care, throughout any month as described in subparagraph (A), or

(II) is in a hospital, extended care facility, nursing home, or intermediate care facility throughout any month as described in subparagraph (B),

(ii) was eligible under section 1382h(a) or (b) of this title for the month preceding such month, and

(iii) under an agreement of the public institution or the hospital, extended care facility, nursing home, or intermediate care facility is

permitted to retain any benefit payable by reason of this subparagraph,

may be an eligible individual or eligible spouse for purposes of this subchapter (and entitled to a benefit determined on the basis of the rate applicable under subsection (b) of this section) for the month referred to in subclause (I) or (II) of clause (i) and, if such subclause still applies, for the succeeding month.

(F) An individual who is an eligible individual or an eligible spouse for a month by reason of subparagraph (E) shall not be treated as being eligible under section 1382h(a) or (b) of this title for such month for purposes of clause (ii) of such subparagraph.

[*See main edition for text of (2) and (3)*]

(4) Repealed. Pub. L. 99-643, § 4(d)(1), Nov. 10, 1986, 100 Stat. 3577.

(5) Notwithstanding anything to the contrary in the criteria being used by the Secretary in determining when a husband and wife are to be considered two eligible individuals for purposes of this subchapter and when they are to be considered an eligible individual with an eligible spouse, the State agency administering or supervising the administration of a State plan under any other program under this chapter may (in the administration of such plan) treat a husband and wife sharing a room or comparable accommodation in a hospital, home, or facility described in paragraph (1)(B) as though they were an eligible individual with his or her eligible spouse for purposes of this subchapter (rather than two eligible individuals), after they have continuously shared such a room or accommodation for 6 months, if treating such husband and wife as two eligible individuals would prevent either of them from receiving benefits or assistance under such plan or reduce the amount thereof.

[*See main edition for text of (f)*]

(g) Individuals deemed to meet resources test

In the case of any individual or any individual and his spouse (as the case may be) who—

[*See main edition for text of (1) to (3)*]

the resources of such individual or such individual and his spouse (as the case may be) shall be deemed not to exceed the amount specified in subsections (a)(1)(H) and (a)(2)(B) of this section during any period that the resources of such individual or such individual and his spouse (as the case may be) does not exceed the maximum amount of resources specified in the State plan, as in effect for October 1972, under which he or they received such aid or assistance for December 1973.

[*See main edition for text of (h)*]

(i) Application and review requirements for certain individuals

For application and review requirements affecting the eligibility of certain individuals, see section 1383(j) of this title.

(As amended Apr. 20, 1983, Pub. L. 98-21, title IV, § 403(a), 97 Stat. 140; July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2611(a)-(c), 2663(g)(1), (2), 98 Stat. 1130, 1168; Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095; Nov. 10, 1986, Pub. L. 99-643, §§ 3(a), 4(c)(3), (d)(1), 9(a), 100 Stat. 3574, 3577, 3579.)

REFERENCES IN TEXT

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

CODIFICATION

Subsec. (c)(1) is set out in this supplement to correct typographical error appearing in the main edition.

AMENDMENTS

1986—Subsec. (d). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (e)(1). Pub. L. 99-643, § 3(a), in subpar. (A) substituted "(D), and (E)" for "and (D)", in subpar. (B) inserted "(subject to subparagraph (E))" after "shall be payable", and added subpars. (E) and (F).

Subsec. (e)(4). Pub. L. 99-643, § 4(d)(1), struck out par. (4) which read as follows: "No benefit shall be payable under this subchapter, except as provided in section 1382h of this title (or section 1382e(c)(3) of this title), with respect to an eligible individual or his eligible spouse who is an aged, blind, or disabled individual solely by application of section 1382c(a)(3)(F) of this title for any month, after the third month, in which he engages in substantial gainful activity during the fifteen-month period following the end of his trial work period determined by application of section 1382c(a)(4)(D)(i) of this title."

Subsec. (e)(5). Pub. L. 99-643, § 9(a), added par. (5).

Subsec. (i). Pub. L. 99-643, § 4(c)(3), added subsec. (i).

1984—Subsec. (a)(1)(B). Pub. L. 98-369, § 2611(a), substituted "the applicable amount determined under paragraph (3)(A)" for "$2,250" and "the applicable amount determined under paragraph (3)(B)" for "$1,500".

Subsec. (a)(2)(B). Pub. L. 98-369, § 2611(b), substituted "the applicable amount determined under paragraph (3)(A)" for "$2,250".

Subsec. (a)(3). Pub. L. 98-369, § 2611(c), added par. (3).

Subsec. (c). Pub. L. 98-369, § 2663(g)(1), amended heading.

Subsec. (g). Pub. L. 98-369, § 2663(g)(2), substituted "or such individual" for "or individuals" in provisions following par. (3).

1983—Subsec. (e)(1)(A). Pub. L. 98-21, § 403(a)(1), inserted reference to subpar. (D).

Subsec. (e)(1)(D). Pub. L. 98-21, § 403(a)(2), added subpar. (D).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by sections 3(a), 4(c)(3), (d)(1) of Pub. L. 99-643 effective July 1, 1987, except as otherwise provided, see section 10(b) of Pub. L. 99-643, set out as a note under section 1396a of this title.

Section 9(b) of Pub. L. 99-643 provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 10, 1986]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2611(a)-(c) of Pub. L. 98-369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98-369, set out as an Effective and Termination Dates of 1984 Amendments note under section 602 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpreta-

tion which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 403(b) of Pub. L. 96-21 provided that: "The amendments made by subsection (a) [amending subsec. (e)(1) of this section] shall be effective with respect to months after the month in which this Act is enacted [April 1983]."

NOTIFICATION OF POSSIBLE BENEFIT AVAILABILITY TO POTENTIAL SUPPLEMENTAL SECURITY INCOME RECIPIENTS

Section 405 of Pub. L. 98-21 provided that: "Prior to July 1, 1984, the Secretary of Health and Human Services shall notify all elderly recipients of benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] who may be eligible for supplemental security income benefits under title XVI of such Act [this subchapter] of the availability of the supplemental security income program, and shall encourage such recipients to contact the Social Security district office. Such notification shall also be made to all recipients prior to attainment of age 65, with the notification made with respect to eligibility for supplementary medical insurance."

MANDATORY MINIMUM STATE SUPPLEMENTATION OF SUPPLEMENTAL SECURITY INCOME BENEFITS PROGRAM; DECEMBER 1973 INCOME; TITLE XVI BENEFIT PLUS OTHER INCOME; REDUCTION OF AMOUNT; ADMINISTRATION AGREEMENT; PAYMENTS TO SECRETARY; STATE CONSTITUTIONAL RESTRICTION

Section 212 of Pub. L. 93-66, as amended by Pub. L. 93-233, § 10, Dec. 31, 1973, 87 Stat. 957; Pub. L. 93-335, § 2(a), July 8, 1974, 88 Stat. 291; Pub. L. 96-265, title II, § 201(b)(2), June 9, 1980, 94 Stat. 446, provided that:

[*See main edition for text of note*]

Enactment of subsec. (a)(4) of section 212 of Pub. L. 93-66 effective Jan. 1, 1981, see section 201(d) of Pub. L. 96-265, as amended, set out as an Effective Date note under section 1382h of this title.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of section 1602 of the Social Security Act [this section] by Pub. L. 92-603, eff. Jan. 1, 1974, was not applicable to Puerto Rico, Guam, and the Virgin Islands. See section 303(b) of Pub. L. 92-603, set out as a note under section 301 of this title. Therefore, as to Puerto Rico, Guam, and the Virgin Islands, section 1602 of the Social Security Act [this section] as it existed prior to reenactment by Pub. L. 92-603, and as amended, continues to apply and reads as follows:

§ 1382. State plans for aid to aged, blind, or disabled

(a) Contents

A State plan for aid to the aged, blind, or disabled, must—

[*See main edition for text of (1) to (12)*]

(13) include reasonable standards, consistent with the objectives of this subchapter, for determining eligibility for and the extent of aid or assistance under the plan;

(14) provide that the State agency shall, in determining need for aid to the aged, blind, or disabled, take into consideration any other income and resources of an individual claiming such aid, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination with respect to any individual—

[*See main edition for text of (A) to (C)*]

(D) the State agency may, before disregarding the amounts referred to above in this paragraph (14), disregard not more than $7.50 of any income; and

(15) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b-7 of this title.

Notwithstanding paragraph (3), if on January 1, 1962, and on the date on which a State submits its plan for approval under this subchapter, the State agency which administered or supervised the administration of the plan of such State approved under subchapter X of this chapter was different from the State agency which administered or supervised the administration of the plan of such State approved under subchapter I of this chapter and the State agency which administered or supervised the administration of the plan of such State approved under subchapter XIV of this chapter, the State agency which administered or supervised the administration of such plan approved under subchapter X of this chapter may be designated to administer or supervise the administration of the portion of the State plan for aid to the aged, blind, or disabled which relates to blind individuals and a separate State agency may be established or designated to administer or supervise the administration of the rest of such plan; and in such case the part of the plan which each such agency administers, or the administration of which each such agency supervises, shall be regarded as a separate plan for purposes of this subchapter.

[*See main edition for text of (b) and (c)*]

(Aug. 14, 1935, ch. 531, title XVI, § 1602, as added July 25, 1962, Pub. L. 87-543, title I, § 141(a), 76 Stat. 198, and amended Oct. 13, 1964, Pub. L. 88-650, § 5(b), 78 Stat. 1078; July 30, 1965, Pub. L. 89-97, title II, § 221(d)(3), title IV, § 403(e), 79 Stat. 358, 418; Jan. 2, 1968, Pub. L. 90-248, title II, §§ 210(a)(5), 213(a)(4), 241(d), 81 Stat. 896, 898, 917; Oct. 30, 1972, Pub. L. 92-603, title IV, §§ 405(d), 406(d), 407(d), 410(d), 413(d), 86 Stat. 1488, 1489, 1491, 1492; Aug. 13, 1981, Pub. L. 97-35, title XXI, § 2184(d)(4), 95 Stat. 817; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2651(h), 98 Stat. 1150.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1315, 1382a, 1382b, 1382c, 1382e, 1382f, 1382g, 1382h, 1382i, 1382j, 1383, 1385, 1396a, 1396b, 1396d, 4728, 8624 of this title.

§ 1382a. Income; earned and unearned income defined; exclusions from income

(a) For purposes of this subchapter, income means both earned income and unearned income; and—

(1) earned income means only—

[*See main edition for text of (A) and (B)*]

(C) any refund of Federal income taxes made by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income credit) and any payment made by an employer under section 3507 of such Code (relating to advance payment of earned income credit); and

[*See main edition for text of (D), (2)*]

(b) In determining the income of an individual (and his eligible spouse) there shall be excluded—

[*See main edition for text of (1)*]

(2)(A) the first $240 per year (or proportionately smaller amounts for shorter periods) of income (whether earned or unearned)

other than income which is paid on the basis of the need of the eligible individual, and

(B) monthly (or other periodic) payments received by any individual, under a program established prior to July 1, 1973 (or any program established prior to such date but subsequently amended so as to conform to State or Federal constitutional standards), if (i) such payments are made by the State of which the individual receiving such payments is a resident, (ii) eligibility of any individual for such payments is not based on need and is based solely on attainment of age 65 or any other age set by the State and residency in such State by such individual, and (iii) on or before September 30, 1985, such individual (I) first becomes an eligible individual or an eligible spouse under this title, and (II) satisfies the twenty-five-year residency requirement of such program as such program was in effect prior to January 1, 1983;

[*See main edition for text of (3) to (8)*]

(9) if such individual is a child, one-third of any payment for his support received from an absent parent;

[*See main edition for text of (10) to (12)*]

(13) any support or maintenance assistance furnished to or on behalf of such individual (and spouse if any) which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) is based on need for such support or maintenance, including assistance received to assist in meeting the costs of home energy (including both heating and cooling), and which is (A) assistance furnished in kind by a private nonprofit agency, or (B) assistance furnished by a supplier of home heating oil or gas, by an entity providing home energy whose revenues are primarily derived on a rate-of-return basis regulated by a State or Federal governmental entity, or by a municipal utility providing home energy.

(As amended Apr. 20, 1983, Pub. L. 98-21, title IV, § 404(a), 97 Stat. 140; July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2616(a), 2639(b), (c), 2663(g)(3), (4), 98 Stat. 1133, 1144, 1145, 1168; Oct. 22, 1986, Pub. L. 99-514, § 2, title XVIII, § 1883(d)(2), (3), 100 Stat. 2095, 2918.)

REFERENCES IN TEXT

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

AMENDMENTS

1986—Subsec. (a)(1)(C). Pub. L. 99-514, § 1883(d)(2), substituted "section 32" for "section 43".

Pub. L. 99-514, § 2, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (b)(2). Pub. L. 99-514, § 1883(d)(3)(A), (B), substituted ", and" for a semicolon in subpar. (A) and a semicolon for a period in subpar. (B).

Subsec. (b)(11) to (13). Pub. L. 99-514, § 1883(d)(3)(C), provided for technical corrections relating to concluding punctuation in pars. (11) to (13).

1984—Subsec. (b)(2)(B). Pub. L. 98-369, § 2663(g)(3), realigned margin of subpar. (B).

Pub. L. 98-369, § 2616(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "monthly (or other periodic) payments received by any individual, under a program established prior to July 1, 1973, if such payments are made by the State of which the individual receiving such payments is a resident, and if eligibility of any individual for such payments is not based on need and is based solely on attainment of age 65 and duration of residence in such State by such individual;".

Subsec. (b)(9). Pub. L. 98-369, § 2663(g)(4), inserted a comma after "child".

Subsec. (b)(13). Pub. L. 98-369, § 2639(b), temporarily amended par. (13) generally, redesignating former cls. (i) and (ii) as (A) and (B), respectively. See Effective and Termination Dates of 1984 Amendment note below.

1983—Subsec. (b)(13). Pub. L. 98-21 temporarily substituted "any support or maintenance assistance furnished to or on behalf of such individual (and spouse if any) which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) is based on need for such support or maintenance, including assistance received to assist in meeting the costs of home energy (including both heating and cooling), and which" for "any assistance received to assist in meeting the costs of home energy, including both heating and cooling, which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) (A) is based on need for such assistance, and (B)". See Effective and Termination Dates of 1983 Amendments note below.

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENT

Section 2616(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984]."

Amendment of subsec. (b)(13) of this section by section 2639(b) of Pub. L. 98-369 effective with respect to months which begin after Sept. 30, 1984, but subsec. (b)(13) as so amended, effective only with respect to months which end before Oct. 1, 1987, see section 2639(d) of Pub. L. 98-369, set out as a note under section 602 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 401 of this title.

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENTS

Section 545(c) of Pub. L. 97-424 and section 404(c) of Pub. L. 98-21, which had provided for the effective and termination dates covering the enactment and subsequent amendment of subsec. (b)(13) of this section by section 545(a) of Pub. L. 97-424 and section 404(a) of Pub. L. 98-21, were repealed by section 2639(c), (d) of Pub. L. 98-369, effective with respect to months beginning after Sept. 30, 1984, see note set out under section 602 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 612, 1382, 1382b, 1382e, 1382h, 1382j, 1383, 1396a, 1396b, 1396d, 8624 of this title.

§ 1382b. Resources

(a) Exclusions from resources

In determining the resources of an individual (and his eligible spouse, if any) there shall be excluded—

[*See main edition for text of (1) to (4)*]

(5) in the case of Natives of Alaska, shares of stock held in a Regional or a Village Corporation, during the period of twenty years in which such stock is inalienable, as provided in section 1606(h) and section 1607(c) of title 43;

(6) assistance referred to in section 1382a(b)(11) of this title for the 9-month period beginning on the date such funds are received (or for such longer period as the Secretary shall by regulations prescribe in cases where good cause is shown by the individual concerned for extending such period); and, for purposes of this paragraph, the term "assistance" includes interest thereon which is excluded from income under section 1382a(b)(12) of this title; and

(7) any amount received from the United States which is attributable to underpayments of benefits due for one or more prior months, under this subchapter or subchapter II of this chapter, to such individual (or spouse) or to any other person whose income is deemed to be included in such individual's (or spouse's) income for purposes of this subchapter; but the application of this paragraph in the case of any such individual (and eligible spouse if any), with respect to any amount so received from the United States, shall be limited to the first 6 months following the month in which such amount is received, and written notice of this limitation shall be given to the recipient concurrently with the payment of such amount.

In determining the resources of an individual (or eligible spouse) an insurance policy shall be taken into account only to the extent of its cash surrender value; except that if the total face value of all life insurance policies on any person is $1,500 or less, no part of the value of any such policy shall be taken into account.

[*See main edition for text of* (b)]

(c) Disposal of resources for less than fair market value

[*See main edition for text of* (c) *and* (d)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2614, 2663(g)(5), 98 Stat. 1132, 1168.)

AMENDMENTS

1984—Subsec. (a)(7). Pub. L. 98-369, § 2614, added par. (7).

Subsec. (c). Pub. L. 98-369, § 2663(g)(5), amended heading.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2614 of Pub. L. 98-369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98-369, set out as an Effective and Termination Dates of 1984 Amendments note under section 602 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1382, 1382j, 1396a, 1396d, 1396p of this title.

§ 1382c. Definitions

(a) [*See main edition for text of* (1) *and* (2)]

(3) [*See main edition for text of* (A) *to* (C)]

(D) The Secretary shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. In determining whether an individual is able to engage in substantial gainful activity by reason of his earnings, where his disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, there shall be excluded from such earnings an amount equal to the cost (to such individual) of any attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Secretary in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions; except that the amounts to be excluded shall be subject to such reasonable limits as the Secretary may prescribe. Notwithstanding the provisions of subparagraph (B), an individual whose services or earnings meet such criteria shall be found not to be disabled.

[*See main edition for text of* (E)]

(F) In determining whether an individual's physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under this section, the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity. If the Secretary does find a medically severe combination of impairments, the combined impact of the impairments shall be considered throughout the disability determination process.

(G) In making determinations with respect to disability under this subchapter, the provisions of sections 421(h), 421(k), and 423(d)(5) of this title shall apply in the same manner as they apply to determinations of disability under subchapter II of this chapter.

(4) A recipient of benefits based on disability under this subchapter may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

(A) substantial evidence which demonstrates that—

(i) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work), and

(ii) the individual is now able to engage in substantial gainful activity; or

(B) substantial evidence (except in the case of an individual eligible to receive benefits under section 1382h of this title) which—

(i) consists of new medical evidence and a new assessment of the individual's residual functional capacity, and demonstrates that—

(I) although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology (related to the individual's ability to work), and

(II) the individual is now able to engage in substantial gainful activity, or

(ii) demonstrates that—

(I) although the individual has not improved medically, he or she has undergone vocational therapy (related to the individual's ability to work), and

(II) the individual is now able to engage in substantial gainful activity; or

(C) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore the individual is able to engage in substantial gainful activity; or

(D) substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) which demonstrates that a prior determination was in error.

Nothing in this paragraph shall be construed to require a determination that an individual receiving benefits based on disability under this subchapter is entitled to such benefits if the prior determination was fraudulently obtained or if the individual is engaged in substantial gainful activity, cannot be located, or fails, without good cause, to cooperate in a review of his or her entitlement or to follow prescribed treatment which would be expected to restore his or her ability to engage in substantial gainful activity. Any determination under this paragraph shall be made on the basis of all the evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition which is presented by the individual or secured by the Secretary. Any determination made under this paragraph shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the individual has previously been determined to be disabled.

[*See main edition for text of (b) and (c)*]

(d) In determining whether two individuals are husband and wife for purposes of this subchapter, appropriate State law shall be applied; except that—

(1) if a man and woman have been determined to be husband and wife under section 416(h)(1) of this title for purposes of subchapter II of this chapter they shall be considered (from and after the date of such determination or the date of their application for benefits under this subchapter, whichever is later) to be husband and wife for purposes of this subchapter, or

[*See main edition for text of (2); (e) and (f)*]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(g)(6), (7), 98 Stat. 1168, 1169; Oct. 9, 1984, Pub. L. 98-460, §§ 2(c), 3(a)(2), 4(b), 8(b), 10(b), 98 Stat. 1796, 1799, 1800, 1804, 1805; Nov. 10, 1986, Pub. L. 99-643, § 4(d)(2), (3)(A), 100 Stat. 3577.)

AMENDMENTS

1986—Subsec. (a)(3)(D). Pub. L. 99-643, § 4(d)(2)(A), struck out ", except for purposes of subparagraph (F) or paragraph (4)," after "such criteria".

Subsec. (a)(3)(F) to (H). Pub. L. 99-643, § 4(d)(2)(B), redesignated subpars. (G) and (H) as (F) and (G), respectively, and struck out former subpar. (F) which read as follows: "For purposes of this subchapter, an individual whose trial work period has ended by application of paragraph (4)(D)(i) shall, subject to section 1382(e)(4) of this title, nonetheless be considered (except for purposes of section 1383(a)(5) of this title) to be disabled through the end of the month preceding the termination month. For purposes of the preceding sentence, the termination month for any individual shall be the earlier of (i) the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (ii) the first month, after the period of 15 consecutive months following the end of such period of trial work, in which such individual engages in or is determined to be able to engage in substantial gainful activity."

Subsec. (a)(4), (5). Pub. L. 99-643, § 4(d)(3)(A), redesignated par. (5) as (4) and struck out former par. (4) which read as follows:

"(A) For purposes of this subchapter, any services rendered during a period of trial work (as defined in subparagraph (B)) by an individual who is an aged, blind, or disabled individual solely by reason of disability (as determined under paragraph (3) of this subsection) shall be deemed not to have been rendered by such individual in determining whether his disability has ceased in a month during such period. As used in this paragraph, the term 'services' means activity which is performed for remuneration or gain or is determined by the Secretary to be of a type normally performed for remuneration or gain.

"(B) The term 'period of trial work', with respect to an individual who is an aged, blind, or disabled individual solely by reason of disability (as determined under paragraph (3) of this subsection), means a period of months beginning and ending as provided in subparagraphs (C) and (D).

"(C) A period of trial work for any individual shall begin with the month in which he becomes eligible for benefits under this subchapter on the basis of his disability; but no such period may begin for an individual who is eligible for benefits under this subchapter on the basis of a disability if he has had a previous period of trial work while eligible for benefits on the basis of the same disability.

"(D) A period of trial work for any individual shall end with the close of whichever of the following months is the earlier:

"(i) the ninth month, beginning on or after the first day of such period, in which the individual ren-

ders services (whether or not such nine months are consecutive); or

"(ii) the month in which his disability (as determined under paragraph (3) of this subsection) ceases (as determined after the application of subparagraph (A) of this paragraph)."

1984—Subsec. (a)(3)(E). Pub. L. 98-369, § 2663(g)(6), realigned margin of subpar. (E).

Subsec. (a)(3)(G). Pub. L. 98-460, § 4(b), added subpar. (G).

Subsec. (a)(3)(H). Pub. L. 98-460, § 8(b), added subpar. (H).

Pub. L. 98-460, § 3(a)(2), inserted reference to section 423(d)(5) of this title.

Pub. L. 98-460, § 10(b), inserted reference to section 421(k) of this title.

Subsec. (a)(5). Pub. L. 98-460, § 2(c), added par. (5).

Subsec. (d)(1). Pub. L. 98-369, § 2663(g)(7), substituted "man and woman" for "man and women".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-643 effective July 1, 1987, except as otherwise provided, see section 10(b) of Pub. L. 99-643, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by section 2(c) of Pub. L. 98-460 applicable to determinations made by the Secretary on or after Oct. 9, 1984, with certain enumerated exceptions and qualifications, see section 2(d) of Pub. L. 98-460, set out as a note under section 423 of this title.

Amendment by section 3(a)(2) of Pub. L. 98-460 applicable to determinations made prior to Jan. 1, 1987, see section 3(a)(3) of Pub. L. 98-460, set out as a note under section 423 of this title.

Amendment by section 4(b) of Pub. L. 98-460 applicable with respect to determinations made on or after the first day of the first month beginning after 30 days after Oct. 9, 1984, see section 4(c) of Pub. L. 98-460, set out as a note under section 423 of this title.

Amendment by section 8(b) of Pub. L. 98-460 applicable to determinations made after 60 days after Oct. 9, 1984, see section 8(c) of Pub. L. 98-460, set out as a note under section 421 of this title.

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

RETROACTIVE BENEFITS

For provisions relating to entitlement to retroactive benefits under section 2 of Pub. L. 98-460, which added subsec. (a)(5) of this section, see section 2(f) of Pub. L. 98-460, set out as a note under section 423 of this title.

PROMULGATION OF REGULATIONS

For provisions requiring the Secretary of Health and Human Services to prescribe regulations necessary to implement amendment to this section [adding subsec. (a)(5)] by section 2(c) of Pub. L. 98-460 not later than 180 days after Oct. 9, 1984, see section 2(g) of Pub. L. 98-460, set out as a note under section 423 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1382, 1382j, 1383, 1383b, 1396a, 1396d, 1396p, 6862, 8624 of this title; title 8 section 1255a.

§ 1382d. Rehabilitation services for blind and disabled individuals

(a) Referral by Secretary of eligible individuals to appropriate State agency; review by Secretary of individual's blindness or disability and need for services

In the case of any blind or disabled individual who—

(1) has not attained age 65, and

(2) is receiving benefits (or with respect to whom benefits are paid) under this subchapter,

the Secretary shall make provision for referral of such individual to the appropriate State agency administering the State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.], or, in the case of any such individual who has not attained age 16, to the State agency administering the State program under subchapter V of this chapter, and (except for individuals who have not attained age 16 and except in such other cases as he may determine) for a review not less often than quarterly of such individual's blindness or disability and his need for and utilization of the services made available to him under such plan.

(b) Repealed. Pub. L. 97-35, title XXI, § 2193(c)(8)(B), Aug. 13, 1981, 95 Stat. 828

(c) Refusal by referred individuals to accept services

Every individual age 16 or over with respect to whom the Secretary is required to make provision for referral under subsection (a) of this section shall accept such services as are made available to him under the State plan for vocational and rehabilitation services approved under title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.]; and no such individual shall be an eligible individual or eligible spouse for purposes of this subchapter if he refuses without good cause to accept services for which he is referred under subsection (a) of this section.

(d) Reimbursement by Secretary to State agency of costs of providing services to referred individuals

The Secretary is authorized to reimburse the State agency administering or supervising the administration of a State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.] for the costs incurred under such plan in the provision of rehabilitation services to individuals who are referred for such services pursuant to subsection (a) of this section (1) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, (2) in cases where such individuals receive benefits as a result of section 1383(a)(6) of this title (except that no reimbursement under this subsection shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month with which his or her entitlement to such benefits ceases, whichever first

occurs), and (3) in cases where such individuals, without good cause, refuse to continue to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation. The determination that the vocational rehabilitation services contributed to the successful return of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation, and the determination of the amount of costs to be reimbursed under this subsection shall be made by the Commissioner of Social Security in accordance with criteria determined by him in the same manner as under section 422(d)(1) of this title.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(g)(8), 98 Stat. 1169; Oct. 9, 1984, Pub. L. 98-460, § 11(b), 98 Stat. 1806.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsecs. (a), (c), and (d), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended. Title I of the Rehabilitation Act of 1973 is classified generally to subchapter I (§ 720 et seq.) of chapter 16 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

AMENDMENTS

1984—Subsecs. (a), (c). Pub. L. 98-369, § 2663(g)(8), substituted "title I of the Rehabilitation Act of 1973" for "the Vocational Rehabilitation Act".

Subsec. (d). Pub. L. 98-460, § 11(b), designated existing provisions of first sentence as cl. (1), added cls. (2) and (3), and added requirement that the determination that the vocational rehabilitation services contributed to the successful return of an individual to substantial gainful activity and the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation be made by the Commissioner of Social Security in accordance with criteria determined by him in the same manner as under section 422(d)(1) of this title.

Pub. L. 98-369, § 2663(g)(8), substituted "title I of the Rehabilitation Act of 1973" for "the Vocational Rehabilitation Act".

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-460 applicable with respect to individuals who receive benefits as a result of section 425(b) or section 1383(a)(6) of this title, or who refuse to continue to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after November 1984, see section 11(c) of Pub. L. 98-460, set out as a note under section 422 of this title.

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 1382e. Supplementary assistance by State or subdivision to needy individuals

[*See main edition for text of (a)*]

(b) Agreement between Secretary and State; contents

Any agreement between the Secretary and a State entered into under subsection (a) of this section shall provide—

[*See main edition for text of (1) and (2)*]

At the option of the State (but subject to paragraph (2) of this subsection), the agreement between the Secretary and such State entered into under subsection (a) of this section shall be modified to provide that the Secretary will make supplementary payments, on and after an effective date to be specified in the agreement as so modified, to individuals receiving benefits determined under section 1382(e)(1)(B) of this title.

[*See main edition for text of (c) to (e)*]

(As amended Apr. 7, 1986, Pub. L. 99-272, title XII, § 12201(b), 100 Stat. 290.)

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-272 inserted provision at end relating to modification of the agreement at the option of the State to provide for supplementary payments on and after an effective date specified in the agreement.

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Enactment of subsec. (c)(3) of this section by Pub. L. 96-265 effective Jan. 1, 1981, see section 201(d) of Pub. L. 96-265, as amended, set out as an Effective Date note under section 1382h of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1310, 1320a-6, 1382g, 1382l, 1383, 1383c, 1396d, 3022 of this title; title 7 sections 2012, 2015; title 12 section 1715w; title 26 sections 51, 6103.

§ 1382f. Cost-of-living adjustments in benefits

(a) Increase of dollar amounts

Whenever benefit amounts under subchapter II of this chapter are increased by any percentage effective with any month as a result of a determination made under section 415(i) of this title—

[*See main edition for text of (1)*]

(2) the amount obtained under paragraph (1) with respect to each subsection shall be further increased by the same percentage by which benefit amounts under subchapter II of this chapter are increased for such month, or, if greater (in any case where the increase under subchapter II of this chapter was determined on the basis of the wage increase percentage rather than the CPI increase percentage), the percentage by which benefit amounts under subchapter II of this chapter would be increased for such month if the increase had been determined on the basis of the CPI increase percentage, (and rounded, when not a multiple of $12, to the next lower multiple of $12), effective with respect to benefits for months after such month.

(b) Publication in Federal Register of new dollar amounts

The new dollar amounts to be in effect under section 1382 of this title and under section 211 of Public Law 93-66 by reason of subsection (a) of this section shall be published in the Federal Register together with, and at the same time as, the material required by section 415(i)(2)(D) of this title to be published therein by reason of the determination involved.

(c) Additional increases

Effective July 1, 1983—

(1) each of the dollar amounts in effect under subsections (a)(1)(A) and (b)(1) of section 1382 of this title, as previously increased under this section, shall be increased by $240 (and the dollar amount in effect under subsection (a)(1)(A) of section 211 of Public Law 93-66, as previously so increased, shall be increased by $120); and

(2) each of the dollar amounts in effect under subsections (a)(2)(A) and (b)(2) of section 1382 of this title, as previously increased under this section, shall be increased by $360.

(As amended Apr. 20, 1983, Pub. L. 98-21, title IV, § 401, 97 Stat. 138.)

REFERENCES IN TEXT

Section 211 of Pub. L. 93-66, referred to in subsecs. (a)(1), (b), and (c)(1), is section 211 of Pub. L. 93-66, title II, July 9, 1973, 87 Stat. 154, as amended, which is set out as a note under section 1382 of this title.

AMENDMENTS

1983—Subsec. (a)(2). Pub. L. 98-21, § 401(b), inserted provision that the amount obtained under par. (1) with respect to each subsection shall be further increased by the percentage by which benefit amounts under subchapter II of this chapter would be increased for such month if the increase had been determined on the basis of the CPI increase percentage, if greater, in any case where the increase under subchapter II of this chapter was determined on the basis of the wage increase percentage rather than the CPI increase percentage.

Subsec. (b). Pub. L. 98-21, § 401(a)(2), substituted "subsection (a) of this subsection" for "this section".

Subsec. (c). Pub. L. 98-21, § 401(a)(1), added subsec. (c).

COST-OF-LIVING INCREASES; COST-OF-LIVING COMPUTATION QUARTER DETERMINATIONS

Payment of increased benefits under program covered in subchapter II of this chapter, see section 1 of Pub. L. 98-604, set out as a note under section 415 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1382, 1382g of this title.

§ 1382g. Payments to State for operation of supplementation program

[See main edition for text of (a) and (b)]

(c) Election to apply subsection (a)(4)

Any State which satisfies the requirements of this section solely by reason of subsection (b) of this section for a particular month or months in any 12-month period (described in such subsection) ending on or after June 30, 1982, may elect, with respect to any month in any subsequent 12-month period (so described), to apply subsection (a)(4) of this section as though the reference to December 1976 in such subsection were a reference to the month of December which occurred in the 12-month period immediately preceding such subsequent period.

(d) Determinations respecting any portion of period July 1, 1980, through June 30, 1981

The Secretary shall not find that a State has failed to meet the requirements imposed by paragraph (4) of subsection (a) of this section with respect to the levels of its supplementary payments for any portion of the period July 1, 1980, through June 30, 1981, if the State's expenditures for such payments in that twelve-month period were not less than its expenditures for such payments for the period July 1, 1976, through June 30, 1977 (or, if the State made no supplementary payments in the period July 1, 1976, through June 30, 1977, the expenditures for the first twelve-month period extending from July 1 through June 30 in which the State made such payments).

(e) Meeting subsection (a)(4) requirements for any month after March 1983

(1) For any particular month after March 1983, a State which is not treated as meeting the requirements imposed by paragraph (4) of subsection (a) of this section by reason of subsection (b) of this section shall be treated as meeting such requirements if and only if—

(A) the combined level of its supplementary payments (to recipients of the type involved) and the amounts payable (to or on behalf of such recipients) under section 1382(b) of this title and section 211(a)(1)(A) of Public Law 93-66, for that particular month,

is not less than—

(B) the combined level of its supplementary payments (to recipients of the type involved) and the amounts payable (to or on behalf of such recipients) under section 1382(b) of this title and section 211(a)(1)(A) of Public Law 93-66, for March 1983, increased by the amount of all cost-of-living adjustments under section 1382f of this title (and any other benefit increases under this subchapter) which have occurred after March 1983 and before that particular month.

(2) In determining the amount of any increase in the combined level involved under paragraph (1)(B) of this subsection, any portion of such amount which would otherwise be attributable to the increase under section 1382f(c) of this title shall be deemed instead to be equal to the amount of the cost-of-living adjustment which would have occurred in July 1983 (without regard to the 3-percent limitation contained in section 415(i)(1)(B) of this title) if section 111 of the Social Security Amendments of 1983 had not been enacted.

(f) Passthrough relating to optional State supplementation

The Secretary shall not find that a State has failed to meet the requirements imposed by subsection (a) of this section with respect to the levels of its supplementary payments for

the period January 1, 1984, through December 31, 1985, if in the period January 1, 1986, through December 31, 1986, its supplementary payment levels (other than to recipients of benefits determined under section 1382(e)(1)(B) of this title) are not less than those in effect in December 1976, increased by a percentage equal to the percentage by which payments under section 1382(b) of this title and section 211(a)(1)(A) of Public Law 93-66 have been increased as a result of all adjustments under section 1382f(a) and (c) of this title which have occurred after December 1976 and before February 1986.

(As amended Apr. 20, 1983, Pub. L. 98-21, title IV, § 402, 97 Stat. 139; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(g)(9), 98 Stat. 1169; Apr. 7, 1986, Pub. L. 99-272, title XII, § 12201(a), 100 Stat. 289.)

REFERENCES IN TEXT

Sections 211(a)(1)(A) and 212(a) of Pub. L. 93-66, referred to in subsecs. (a), (e)(1), (f), are sections 211(a)(1)(A) and 212(a) of Pub. L. 93-66, title II, July 9, 1973, 87 Stat. 154, 155, as amended, which are set out as notes under section 1382 of this title.

Section 111 of the Social Security Amendments of 1983, referred to in subsec. (e)(2), is section 111 of Pub. L. 98-21, title I, Apr. 20, 1983, 97 Stat. 72, which amended sections 402, 403, 415, and 430 of this title and enacted provisions set out as notes under sections 402 and 415 of this title and section 3023 of Title 36, Veterans' Benefits.

AMENDMENTS

1986—Subsec. (f). Pub. L. 99-272 added subsec. (f).

1984—Subsec. (d). Pub. L. 98-369, § 2663(g)(9)(A), realigned margin of subsec. (d).

Pub. L. 98-369, § 2663(g)(9)(B), (C), struck out the comma after "levels of its", and inserted a comma after "1980" and after "1976", wherever appearing.

1983—Subsecs. (c), (d). Pub. L. 98-21 redesignated subsec. (c), added by Pub. L. 97-377, as (d).

Subsec. (e). Pub. L. 98-21 added subsec. (e).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

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

§ 1382h. Benefits for individuals who perform substantial gainful activity despite severe medical impairment

(a) Eligible individuals

(1) Except as provided in section 1383(j) of this title, any individual who was determined to be an eligible individual (or eligible spouse) by reason of being under a disability and was eligible to receive benefits under section 1382 of this title (or a federally administered State supplementary payment) for a month and whose earnings in a subsequent month exceed the amount designated by the Secretary ordinarily to represent substantial gainful activity shall qualify for a monthly benefit under this subsection for such subsequent month (which shall be in lieu of any benefit under section 1382 of this title) equal to an amount determined under section 1382(b)(1) of this title (or, in the case of an individual who has an eligible spouse, under section 1382(b)(2) of this title), and for purposes of subchapter XIX of this chapter shall be considered to be receiving supplemental security income benefits under this subchapter, for so long as—

(A) such individual continues to have the disabling physical or mental impairment on the basis of which such individual was found to be under a disability; and

(B) the income of such individual, other than income excluded pursuant to section 1382a(b) of this title, is not equal to or in excess of the amount which would cause him to be ineligible for payments under section 1382 of this title and such individual meets all other non-disability-related requirements for eligibility for benefits under this subchapter.

(2) The Secretary shall make a determination under paragraph (1)(A) with respect to an individual not later than 12 months after the first month for which the individual qualifies for a benefit under this subsection.

(b) Blind or disabled individuals receiving supplemental security income benefits

(1) Except as provided in section 1383(j) of this title, for purposes of subchapter XIX of this chapter, any individual under age 65 who was determined to be a blind or disabled individual eligible to receive a benefit under section 1382 of this title or any federally administered State supplementary payment for a month and who in a subsequent month is ineligible for benefits under this subchapter (and for any federally administered State supplementary payments) because of his or her income shall, nevertheless, be considered to be receiving supplemental security income benefits for such subsequent month provided that the Secretary determines under regulations that—

(A) such 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, meets all non-disability-related requirements for eligibility for benefits under this subchapter;

(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 termination of eligibility for benefits under subchapter XIX of this chapter would seriously inhibit his ability to continue his employment; and

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

which would be available to him in the absence of such earnings.

(2)(A) Determinations made under paragraph (1)(D) shall be based on information and data updated no less frequently than annually.

(B) In determining an individual's earnings for purposes of paragraph (1)(D), there shall be excluded from such earnings an amount equal to the sum of any amounts which are or would be excluded under clauses (ii) and (iv) of section 1382a(b)(4)(B) of this title (or under clauses (ii) and (iii) of section 1382a(b)(4)(A) of this title) in determining his or her income.

(3) In the case of a State that exercises the option under section 1396a(f) of this title, any individual who—

(A)(i) qualifies for a benefit under subsection (a) of this section, or

(ii) meets the requirements of paragraph (1); and

(B) was eligible for medical assistance under the State plan approved under subchapter XIX of this chapter in the month immediately preceding the first month in which the individual qualified for a benefit under such subsection or met such requirements,

shall remain eligible for medical assistance under such plan for so long as the individual qualifies for a benefit under such subsection or meets such requirements.

(c) Information and training programs

The Secretary of Health and Human Services and the Secretary of Education shall jointly develop and disseminate information, and establish training programs for staff personnel, with respect to the potential availability of benefits and services for disabled individuals under the provisions of this section. The Secretary of Health and Human Services shall provide such information to individuals who are applicants for and recipients of benefits based on disability under this subchapter and shall conduct such programs for the staffs of the district offices of the Social Security Administration. The Secretary of Education shall conduct such programs for the staffs of the State Vocational Rehabilitation agencies, and in cooperation with such agencies shall also provide such information to other appropriate individuals and to public and private organizations and agencies which are concerned with rehabilitation and social services or which represent the disabled.

(As amended Oct. 9, 1984, Pub. L. 98-460, § 14(b), 98 Stat. 1808; Nov. 10, 1986, Pub. L. 99-643, §§ 4(a), (b), (c)(2), 7(a), 100 Stat. 3575, 3577, 3579.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-643, § 4(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Any individual who is an eligible individual (or eligible spouse) by reason of being under a disability and was eligible to receive benefits under section 1382(b) of this title or under this section for the month preceding the month for which eligibility for benefits under this section is now being determined, and who would otherwise be denied benefits by reason of section 1382(e)(4) of this title or ceases to be an eligible individual (or eligible spouse) because his earnings have demonstrated a capacity to engage in substantial gainful activity, shall nevertheless qualify for a monthly benefit equal to an amount determined under section 1382(b)(1) of this title (or, in the case of an individual who has an eligible spouse, under section 1382(b)(2) of this title), and for purposes of subchapter XIX of this chapter shall be considered a disabled individual receiving supplemental security income benefits under this subchapter, for so long as the Secretary determines that—

"(1) such individual continues to have the disabling physical or mental impairment on the basis of which such individual was found to be under a disability, and continues to meet all non-disability-related requirements for eligibility for benefits under this subchapter; and

"(2) the income of such individual, other than income excluded pursuant to section 1382a(b) of this title, is not 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)."

Subsec. (a)(1). Pub. L. 99-643, § 4(c)(3)(A), substituted "Except as provided in section 1383(j) of this section, any individual" for "Any individual".

Subsec. (b). Pub. L. 99-643, § 4(b)(1)-(4), substituted "meets" for "continues to meet" in former par. (1) and "(including any federally administered State supplementary payments), benefits under subchapter XIX of this chapter, and publicly funded attendant care services (including personal care assistance)," for "and subchapter XIX of this chapter" in former par. (4), redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively, of par. (1), and substituted introductory provisions of such par. (1) for former undesignated introductory provisions which read as follows: "For purposes of subchapter XIX of this chapter, any individual under age 65 who, for the month preceding the first month in the period to which this subsection applies, 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 subsection (a) of this section, or

"(iv) a supplementary payment under section 1382e(c)(3) of this title,

shall be considered to be a blind or disabled individual receiving supplemental security income benefits for so long as the Secretary determines under regulations that—".

Subsec. (b)(1). Pub. L. 99-643, § 4(c)(2)(B), substituted "Except as provided in section 1383(j) of this title, for purposes of" for "For purposes of".

Subsec. (b)(2). Pub. L. 99-643, § 4(b)(5), added par. (2).

Subsec. (b)(3). Pub. L. 99-643, § 7(a), added par. (3).

1984—Subsec. (c). Pub. L. 98-460 added subsec. (c).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-643 effective July 1, 1987, except as otherwise provided, see section 10(b) of Pub. L. 99-643, set out as a note under section 1396a of this title.

EFFECTIVE DATE

Section 201(d) of Pub. L. 96-265, as amended by Pub. L. 98-460, § 14(a), Oct. 9, 1984, 98 Stat. 1808; Pub. L. 99-643, § 2, Nov. 10, 1986, 100 Stat. 3574, provided that: "The amendments made by subsections (a) and (b) [enacting this section and amending section 1382e of this title and provisions set out as a note under section 1382 of this title] shall become effective on January 1, 1981."

[Section 10(a) of Pub. L. 99-643 provided that: "The amendment made by section 2 [amending this note]

shall become effective on the date of the enactment of this Act [Nov. 10, 1986]."]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1382, 1382c, 1382e, 1382i, 1383, 1396a, 1396d, 1396s of this title.

§ 1382j. Attribution of sponsor's income and resources to aliens

[*See main edition for text of (a)*]

(b) Determination of amount and resources

[*See main edition for text of (1)*]

(2) The amount of resources of a sponsor (and his spouse) which shall be deemed to be the resources of an alien for any year shall be determined as follows:

[*See main edition for text of (A)*]

(B) The amount determined under subparagraph (A) shall be reduced by an amount equal to (i) the applicable amount determined under section 1382(a)(3)(B) of this title in the case of a sponsor who has no spouse with whom he is living, or (ii) the applicable amount determined under section 1382(a)(3)(A) of this title in the case of a sponsor who has a spouse with whom he is living.

[*See main edition for text of (C); (c) and (d)*]

(e) Joint and several liability of alien and sponsor for overpayments

Any sponsor of an alien, and such alien, shall be jointly and severally liable for an amount equal to any overpayment made to such alien during the period of three years after such alien's entry into the United States, on account of such sponsor's failure to provide correct information under the provisions of this section, except where such sponsor was without fault, or where good cause for such failure existed. Any such overpayment which is not repaid to the Secretary or recovered in accordance with section 1383(b) of this title shall be withheld from any subsequent payment te which such alien or such sponsor is entitled under any provision of this chapter.

[*See main edition for text of (f)*]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2611(d), 2663(g)(10), 98 Stat. 1131, 1189.)

AMENDMENTS

1984—Subsec. (b)(2)(B). Pub. L. 98-369, § 2611(d), substituted "the applicable amount determined under section 1382(a)(3)(B) of this title" for "$1,500" and "the applicable amount determined under section 1382(a)(3)(A) of this title" for "$2,250".

Subsec. (e). Pub. L. 98-369, § 2663(g)(10), substituted "severally" for "severably".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2611(d) of Pub. L. 98-369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98-369, set out as an Effective and Termination Dates of 1984 Amendments note under section 602 of this title.

Amendment by section 2663(g)(10) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

PART B—PROCEDURAL AND GENERAL PROVISIONS

§ 1383. Procedure for payment of benefits

(a) Time, manner, form, and duration of payments; promulgation of regulations

[*See main edition for text of (1)*]

(2)(A) Payments of the benefit of any individual may be made to any such individual or to his eligible spouse (if any) or partly to each, or, if the Secretary deems it appropriate to any other person (including an appropriate public or private agency) who is interested in or concerned with the welfare of such individual (or spouse). Notwithstanding the provisions of the preceding sentence, in the case of any individual or eligible spouse referred to in section 1382(e)(3)(A) of this title, the Secretary shall provide for making payments of the benefit to any other person (including an appropriate public or private agency) who is interested in or concerned with the welfare of such individual (or spouse).

(B) Any determination made under subparagraph (A) that payment should be made te a person other than the individual or spouse entitled to such payment must be made on the basis of an investigation, carried out either prior to such determination or within forty-five days after such determination, and on the basis of adequate evidence that such determination is in the interest of the individual or spouse entitled to such payment (as determined by the Secretary in regulations). The Secretary shall ensure that such determinations are adequately reviewed.

(C)(i) In any case where payment is made under this subchapter to a person other than the individual or spouse entitled to such payment, the Secretary shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Secretary shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

(ii) Clause (i) shall not apply in any case where the other person to whom such payment is made is a parent or spouse of the individual entitled to such payment who lives in the same household as such individual. The Secretary shall require such parent or spouse te verify on a periodic basis that such parent or spouse continues to live in the same household as such individual.

(iii) Clause (i) shall not apply in any case where the other person to whom such payment is made is a State institution. In such cases, the Secretary shall establish a system of accountability monitoring for institutions in each State.

(iv) Clause (i) shall not apply in any case where the individual entitled to such payment

is a resident of a Federal institution and the other person to whom such payment is made is the institution.

(v) Notwithstanding clauses (i), (ii), (iii), and (iv), the Secretary may require a report at any time from any person receiving payments on behalf of another, if the Secretary has reason to believe that the person receiving such payments is misusing such payments.

(D) The Secretary shall make an initial report to each House of the Congress on the implementation of subparagraphs (B) and (C) within 270 days after October 9, 1984. The Secretary shall include in the annual report required under section 904 of this title, information with respect to the implementation of subparagraphs (B) and (C), including the same factors as are required to be included in the Secretary's report under section 405(j)(4)(B) of this title.

[*See main edition for text of (3) to (6)*]

(7)(A) In any case where—

(i) an individual is a recipient of benefits based on disability or blindness under this subchapter,

(ii) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and

(iii) a timely request for review or for a hearing is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits continued for an additional period beginning with the first month beginning after October 9, 1984, for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (I) the month preceding the month in which a decision is made after such a hearing, or (II) the month preceding the month in which no such request for review or a hearing is pending.

(B)(i) If an individual elects to have the payment of his benefits continued for an additional period under subparagraph (A), and the final decision of the Secretary affirms the determination that he is not entitled to such benefits, any benefits paid under this subchapter pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this subchapter, except as otherwise provided in clause (ii).

(ii) If the Secretary determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual's election under subparagraph (A) shall be subject to waiver consideration under the provisions of subsection (b)(1) of this section.

(C) The provisions of subparagraphs (A) and (B) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made on or after October 9, 1984, or prior to such date but only on the basis of a timely request for review or for a hearing.

(b) Overpayments and underpayments; adjustment, recovery, or payment of amounts by Secretary

(1)(A) Whenever the Secretary finds that more or less than the correct amount of benefits has been paid with respect to any individual, proper adjustment or recovery shall, subject to the succeeding provisions of this subsection, be made by appropriate adjustments in future payments to such individual or by recovery from such individual or his eligible spouse (or from the estate of either) or by payment to such individual or his eligible spouse, or, if such individual is deceased, by payment—

(i) to any surviving spouse of such individual, whether or not the individual's eligible spouse, if (within the meaning of the first sentence of section 402(i) of this title) such surviving husband or wife was living in the same household with the individual at the time of his death or within the 6 months immediately preceding the month of such death, or

(ii) if such individual was a disabled or blind child who was living with his parent or parents at the time of his death or within the 6 months immediately preceding the month of such death, to such parent or parents.

(B) The Secretary (i) shall make such provision as he finds appropriate in the case of payment of more than the correct amount of benefits with respect to an individual with a view to avoiding penalizing such individual or his eligible spouse who was without fault in connection with the overpayment, if adjustment or recovery on account of such overpayment in such case would defeat the purposes of this subchapter, or be against equity and good conscience, or (because of the small amount involved) impede efficient or effective administration of this subchapter, and (ii) shall in any event make the adjustment or recovery (in the case of payment of more than the correct amount of benefits), in the case of an individual or eligible spouse receiving benefit payments under this subchapter (including supplementary payments of the type described in section 1382e(a) of this title and payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66), in amounts which in the aggregate do not exceed (for any month) the lesser of (I) the amount of his or their benefit under this subchapter for that month or (II) an amount equal to 10 percent of his or their income for that month (including such benefit but excluding any other income excluded pursuant to section 1382a(b) of this title), unless fraud, wilful misrepresentation, or concealment of material information was involved on the part of the individual or spouse in connection with the overpayment, or unless the individual requests that such adjustment or recovery be made at a higher or lower rate and the Secretary determines that adjustment or recovery at such rate is justified and appropriate. The availability (in the case of an individual who has been paid more than the correct amount of benefits) of procedures for adjustment or recovery at a limited rate under clause (ii) of the preceding sentence shall not, in and of itself, prevent or re-

strict the provision (in such case) of more substantial relief under clause (i) of such sentencc.

(2) Notwithstanding any other provision of this section, when any payment of more than the corrcct amount is made to or on behalf of an individual who has died, and such payment—

(A) is made by direct deposit to a financial institution;

(B) is credited by the financial institution to a joint account of the deceased individual and another person; and

(C) such other person is the surviving spouse of the deceased individual, and was eligible for a payment under this subchapter (including any Stato supplementation payment paid by the Secretary) as an eligible spouse (or as either member of an eligible couple) for the month in which the deceased individual died,

the amount of such payment in excess of the correct amount shall be treated as a payment of more than the correct amount to such other person.

(3) In any case in which advance payments for a taxable year made by all employers to an individual under section 3507 of the Internal Revenue Code of 1986 (relating to advance payment of earned income credit) exceed the amount of such individual's earned income credit allowable under section 32 of such Code for such year, so that such individual is liable under section 32(g) of such Code for a tax equal to such excess, the Secretary shall provide for an appropriate adjustment of such individual's benefit amount under this subchapter so as to provide payment to such individual of an amount equal to the amount of such benefits lost by such individual on account of such cxcess advance payments.

(4) If any overpayment with respect to an individual (or an individual and his or her spouse) is attributable solely to the ownership or possession by such individual (and spouse if any) of resources having a value which exceeds the applicable dollar figure specified in paragraph (1)(B) or (2)(B) of section 1382(a) of this title by $50 or less, such individual (and spouse if any) shall be deemed for purposes of the second sentence of paragraph (1) to have been without fault in connection with the overpayment, and no adjustment or recovery shall be made under the first sentence of sueh paragraph, unless the Secretary finds that the failure of such individual (and spouse if any) to report such value correctly and in a timely manner was knowing and willful.

(5) For payments for which adjustments are made by reason of a retroactive payment of benefits under subchapter II of this chapter, see section 1320a-6 of this title.

[*See main edition for text of* (c)]

(d) Procedures applicable; prohibition on assignment of payments; representation of claimants; maximum fees; penalties for violations

(1) The provisions of section 407 of this title and subsections (a), (d), and (e) of section 405 of this title shall apply with respect to this part to the same extent as they apply in the case of subchapter II of this chapter.

[*See main edition for text of* (2)]

(e) Administrative requirements prescribed by Secretary; criteria; reduction of benefits to individual for noncompliance with requirements; payment to homeless

(1)(A) The Secretary shall, subject to subparagraph (B) and subsection (j) of this section, prescribe such requirements with respect to the filing of applications, the suspension or termination of assistance, the furnishing of other data and material, and the reporting of events and changes in circumstances, as may be necessary for the effective and efficient administration of this subchapter.

(B) The requirements prescribed by the Secretary pursuant to subparagraph (A) shall require that eligibility for benefits under this subchapter will not be determined solely on the basis of declarations by the applicant concerning eligibility factors or other relevant facts, and that relevant information will be verified from independent or collateral sources and additional information obtained as necessary in order to assure that such benefits are only provided to eligible individuals (or eligible spouses) and that the amounts of such benefits are correct. For this purpose and for purposes of fedcrally administered supplementary payments of the type described in section 1382e(a) of this title (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66), the Sccretary shall, as may be necessary, request and utilize information available pursuant to section 6103(*l*)(7) of the Intornal Revenue Code of 1986, and any information which may be available from Stato systems under section 1320b-7 of this title, and shall comply with the requirements applicable to States (with respect to information avallable pursuant to section 6103(*l*)(7)(B) of such Code) under subsections (a)(6) and (c) of such section 1320b-7 of this title.

[*See main edition for text of* (2)]

(3) The Secretary shall provide a method of making payments under this subchapter to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.

[*See main edition for text of* (f)]

(g) Reimbursement to States for interim assistance payments

[*See main edition for text of* (1) *to* (5); (h) *and* (i)]

(j) [1] Pre-release procedures for institutionalized persons

The Secretary shall develop a system under which an individual can apply for supplemental

[1] So in original. Two subsecs. (j) have been enacted.

security income benefits under this subchapter prior to the discharge or release of the individual from a public institution. The Secretary and the Secretary of Agriculture shall develop a procedure under which an individual who applies for supplemental security income benefits under this subchapter shall also be permitted to apply for participation in the food stamp program by executing a single application.

(j) [1] Application and review requirements for certain individuals

(1) Notwithstanding any provision of section 1382 or 1382h of this title, any individual who—

(A) was an eligible individual (or eligible spouse) under section 1382 of this title or was eligible for benefits under or pursuant to section 1382h of this title, and

(B) who, after such eligibility, is ineligible for benefits under or pursuant to both such sections for a period of 12 consecutive months,

may not thereafter become eligible for benefits under or pursuant to either such section until the individual has reapplied for benefits under section 1382 of this title and been determined to be eligible for benefits under such section.

(2)(A) Notwithstanding any provision of section 1382 of this title or section 1382h of this title, any individual who was eligible for benefits pursuant to section 1382h(b) of this title, and who—

(i)(I) on the basis of the same impairment on which his or her eligibility under such section 1382h(b) of this title was based becomes eligible for benefits under section 1382 or 1382h(a) of this title for a month that follows a period during which the individual was ineligible for benefits under sections 1382 and 1382h(a) of this title, and

(II) has earned income (other than income excluded pursuant to section 1382a(b) of this title) for any month in the 12-month period preceding such month that is equal to or in excess of the amount that would cause him or her to be ineligible for payments under section 1382(b) of this title for that month (if he or she were otherwise eligible for such payments); or

(ii)(I) on the basis of the same impairment on which his or her eligibility under such section 1382h(b) of this title was based becomes eligible under section 1382h(b) of this title for a month that follows a period during which the individual was ineligible under section 1382 of this title and section 1382h of this title, and

(II) has earned income (other than income excluded pursuant to section 1382a(b) of this title) for such month or for any month in the 12-month period preceding such month that is equal to or in excess of the amount that would cause him or her to be ineligible for payments under section 1382(b) of this title for that month (if he or she were otherwise eligible for such payments);

shall, upon becoming eligible (as described in clause (i)(I) or (ii)(I)), be subject to a prompt review of the type described in section 1382c(a)(4) of this title.

(B) If the Secretary determines pursuant to a review required by subparagraph (A) that the impairment upon which the eligibility of an individual is based has ceased, does not exist, or is not disabling, such individual may not thereafter become eligible for a benefit under or pursuant to section 1382 of this title or section 1382h of this title until the individual has reapplied for benefits under section 1382 of this title and been determined to be eligible for benefits under such section.

(k) Notifications to applicants and recipients

The Secretary shall notify an individual receiving benefits under section 1382 of this title on the basis of disability or blindness of his or her potential eligibility for benefits under or pursuant to section 1382h of this title—

(1) at the time of the initial award of benefits to the individual under section 1382 of this title (if the individual has attained the age of 18 at the time of such initial award), and

(2) at the earliest time after an initial award of benefits to an individual under section 1382 of this title that the individual's earned income for a month (other than income excluded pursuant to section 1382a(b) of this title) is $200 or more, and periodically thereafter so long as such individual has earned income (other than income so excluded) of $200 or more per month.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2612(a), 2613, 2651(j), 2663(g)(11), (12), 98 Stat. 1131, 1150, 1169; Oct. 9, 1984, Pub. L. 98-460, §§ 7(b), 16(b), 98 Stat. 1803, 1809; Apr. 7, 1986, Pub. L. 99-272, title XII, § 12113(b), 100 Stat. 288; Oct. 22, 1986, Pub. L. 99-514, § 2, title XVIII, § 1883(d)(1), 100 Stat. 2095, 2918; Oct. 27, 1986, Pub. L. 99-570, title XI, §§ 11005(a), 11006, 100 Stat. 3207-169; Nov. 10, 1986, Pub. L. 99-643, §§ 4(c)(1), (d)(3)(B), 5, 8(a), 100 Stat. 3576-3579.)

REFERENCES IN TEXT

Section 212 of Pub. L. 93-66, referred to in subsecs. (b)(1), (e)(1)(B), (g)(2), and (i)(2), is section 212 of Pub. L. 93-66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out in a note under section 1382 of this title.

The Internal Revenue Code of 1986, referred to in subsecs. (b)(3) and (e)(1)(B), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1986—Subsec. (b)(1). Pub. L. 99-643, § 8(a), substituted "(A) Whenever the Secretary" for "Whenever the Secretary", "by recovery from such individual or his eligible spouse (or from the estate of either) or by payment to such individual or his eligible spouse, or, if such individual is deceased, by payment—" for "by recovery from or payment to such individual or his eligible spouse (or by recovery from the estate of either). The Secretary (A) shall make", added subpar. (A)(i) and (ii), substituted "(B) the Secretary (i) shall make such provision" for "such provision", "and (ii) shall in any event" for "and (B) shall in any event", "(I) the amount" for "(i) the amount", "(II) an amount" for "(ii) an amount", "clause (ii)" for "clause (B)", and "clause (i)" for "clause (A)".

Subsec. (b)(2). Pub. L. 99-272 added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 99-514, § 2, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Pub. L. 99-272 redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (b)(4), (5). Pub. L. 99-272 redesignated pars. (3) and (4) as (4) and (5), respectively.

Subsec. (e)(1)(A). Pub. L. 99-643, § 4(c)(1)(A), substituted "subparagraph (B) and subsection (j) of this section" for "subparagraph (B)".

Subsec. (e)(1)(B). Pub. L. 99-514, § 2, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (e)(3). Pub. L. 99-570, § 11005(a), added par. (3).

Subsec. (g). Pub. L. 99-514, § 1883(d)(1), amended heading generally.

Subsec. (j). Pub. L. 99-570, § 11006, added subsec. (j) relating to pre-release procedures for institutionalized persons.

Pub. L. 99-643, § 4(c)(1)(B), added subsec. (j) relating to application and review requirements for certain individuals.

Subsec. (j)(2)(A). Pub. L. 99-643, § 4(d)(3)(B), in subsec. (j) relating to application and review requirements, substituted "section 1382c(a)(4) of this title" for "section 1382c(a)(5) of this title" in closing provisions.

Subsec. (k). Pub. L. 99-643, § 5, added subsec. (k).

1984—Subsec. (a)(2). Pub. L. 98-460, § 16(b), redesignated existing provisions as subpar. (A) and added subpars. (B) to (D).

Subsec. (a)(7). Pub. L. 98-460, § 7(b), added par. (7).

Pub. L. 98-369, § 2612(a), inserted "(A)" before "shall make such provision" in second sentence, and added cl. (B).

Subsec. (b)(1). Pub. L. 98-369, § 2663(g)(11)(A), substituted "equity and good conscience" for "equity or good conscience".

Subsec. (b)(2). Pub. L. 98-369, § 2663(g)(11)(B), substituted "section 32" and "section 32(g)" for "section 43" and "section 43(g)", respectively.

Subsec. (b)(3), (4). Pub. L. 98-369, § 2613, added par. (3) and redesignated former par. (3) as (4).

Subsec. (d)(1). Pub. L. 98-369, § 2663(g)(12), substituted "and (e)" for "(e), and (f)".

Subsec. (e)(1)(B). Pub. L. 98-369, § 2651(j), inserted provision that for this purpose and for purposes of federally administered supplementary payments of the type described in section 1382e(a) of this title (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66), the Secretary shall, as may be necessary, request and utilize information available pursuant to section 6103(*l*)(7) of the Internal Revenue Code of 1954, and any information which may be available from State systems under section 1320b-7 of this title, and shall comply with the requirements applicable to States (with respect to information available pursuant to section 6103(*l*)(7)(B) of such Code) under subsections (a)(6) and (c) of such section 1320b-7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 8(b) of Pub. L. 99-643 provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to benefits payable for months after May 1986."

Amendment by sections 4(c)(1), (d)(3)(B), 5 of Pub. L. 99-643 effective July 1, 1987, except as otherwise provided, see section 10(b) of Pub. L. 99-643, set out as a note under section 1396a of this title.

Section 11005(c)(1) of Pub. L. 99-570 provided that: "The amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Oct. 27, 1986]."

Amendment by Pub. L. 99-272, applicable only in the case of deaths of which the Secretary is first notified on or after Apr. 7, 1986, see section 12113(c) of Pub. L. 99-272, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by section 16(b) of Pub. L. 98-460 effective Oct. 9, 1984, see section 16(d) of Pub. L. 98-460, set out as a note under section 405 of this title.

Amendment by sections 2612(a), 2613 of Pub. L. 98-369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98-369, set out as an Effective and Termination Dates of 1984 Amendments note under section 602 of this title.

Amendment by section 2651(j) of Pub. L. 98-369, effective July 18, 1984, see section 2651(*l*)(1) of Pub. L. 98-369, set out as an Effective Date note under section 1320b-7 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

PAYMENT OF TRAVEL EXPENSES

Pub. L. 99-500, § 101(i) [H.R. 5233, title II, § 200], Oct. 18, 1986, 100 Stat. 1783-287, and Pub. L. 99-591, § 101(i) [H.R. 5233, title II, § 200], Oct. 30, 1986, 100 Stat. 3341-287, provided in part: "That travel expense payments under section 1631(h) of such Act [subsec. (h) of this section] for travel to hearings may be made only when travel of more than seventy-five miles is required."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 99-178, title II, § 200, Dec. 12, 1985, 99 Stat. 1116.

Pub. L. 98-619, title II, § 200, Nov. 8, 1984, 98 Stat. 3318.

Pub. L. 98-139, title II, § 200, Oct. 31, 1983, 97 Stat. 884.

Pub. L. 97-377, title I, § 101(e)(1), Dec. 21, 1982, 96 Stat. 1891.

Pub. L. 97-92, § 101(a) [H.R. 4560, title II, § 200], Dec. 15, 1981, 95 Stat. 1183.

NOTIFICATION OF ADJUSTMENT OF BENEFITS BY SECRETARY

Section 2612(b) of Pub. L. 98-369 provided that: "If an adjustment referred to in section 1631(b)(1) of the Social Security Act [subsec. (b)(1) of this section] is in effect with respect to an individual or eligible spouse on the effective date of this subsection [Oct. 1, 1984], and the amount of such adjustment for a month is greater than the amount described in section 1631(b)(1)(B)(ii) of such Act [subsec. (b)(1)(B)(ii) of this section], as added by subsection (a), the Secretary shall notify the individual whose benefits are being adjusted, in writing, of his or her right to have the adjustment reduced to the amount described in such section 1631(b)(1)(B)(ii)."

PAYMENT OF COSTS OF REHABILITATION SERVICES

Amendment to sections 422 and 1382d of this title by section 11(a), (b) of Pub. L. 98-460 applicable with respect to individuals who receive benefits as a result of section 425(b) or section 1383(a)(6) of this title, or who refuse to continue to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after the first month following October 1984, see section 11(c) of Pub. L. 98-460, set out as an Effective Date of 1984 Amendment note under section 422 of this title.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of section 1603 of the Social Security Act [this section] by Pub. L. 92-603, eff. Jan. 1, 1974, was not applicable to Puerto Rico, Guam, and the Virgin Islands. See section 303(b) of Pub. L. 92-603, set out as a note under section 301 of this title. Therefore, as to Puerto Rico, Guam, and the Virgin Islands, section

1603 of the Social Security Act [this section] as it existed prior to reenactment by Pub. L. 92-603, and as amended, continues to apply and reads as follows:

§ 1363. Payments to States; quarterly expenditures to exceed average of total expenditures for each quarter of fiscal year ending June 30, 1965

(a) From the sums appropriated therefor, the Secretary shall pay to each State which has a plan approved under this subchaptor for each quarter, beginning with the quarter commencing October 1, 1962—

[*See main edition for text of (1) to (3)*]

(4) in the case of any State, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health and Human Services for the proper and efficient administration of the State plan—

[*See main edition for text of (A)*]

(B) 100 percent of so much of such expenditures as are for the costs of the implementation and operation of the immigration status verification system described in section 1137(d) [42 U.S.C. 1320b-7(d)]; plus

(C) one-half of the remainder of such expenditures.

[*See main edition for text of (b)*]

(Aug. 14, 1935, ch. 531, title XVI, § 1603, as added July 25, 1962, Pub. L. 87-543, title I, § 141(a), 76 Stat. 200, and amended July 30, 1965, Pub. L. 89-97, title I, § 122, title II, § 221(d)(4), title IV, § 401(b), 79 Stat. 353, 359, 414; Jan. 2, 1968, Pub. L. 90-248, title II, § 212(d), 81 Stat. 898; Oct. 20, 1972, Pub. L. 92-512, title III, § 301(b), (d), 86 Stat. 946, 947; Jan. 4, 1975, Pub. L. 93-647, §§ 3(e)(2), 5(e), 68 Stat. 2349, 2350; Aug. 13, 1981, Pub. L. 97-35, title XXI, § 2184(d)(5), title XXIII, § 2353(m)(2), (3), 95 Stat. 818, 873; Nov. 6, 1986, Pub. L. 99-603, title I, § 121(b)(4), 100 Stat. 3391.)

[Amendment by Pub. L. 99-603 effective Oct. 1, 1987, see section 121(c)(2) of Pub. L. 99-603, set out as an Effective Date of 1986 Amendment note under section 502 of this title.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 643, 909, 1306a, 1318, 1319, 1382, 1382d, 1382h, 1382j, 1383a, 1390a of this title.

§ 1383a. Fraudulent acts; penalties; restitution

(a) Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit under this subchapter,

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to any such benefit,

(3) having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit, or (B) the initial or continued right to any such benefit of any other individual in whose behalf he has applied for or is receiving such benefit, conceals or fails to disclose such event with an intent fraudulently to secure such benefit either in a greater amount or quantity than is due or when no such benefit is authorized, or

(4) having made application to receive any such benefit for the use and benefit of another and having received it, knowingly and willfully converts such benefit or any part thereof to a use other than for the use and benefit of such other person,

shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(b)(1) Any person or other entity who is convicted of a violation of any of the provisions of paragraphs (1) through (4) of subsection (a) of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a payee under section 1383(a)(2) of this title on behalf of another individual (other than such person's eligible spouse), in lieu of the penalty set forth in subsection (a) of this section—

(A) upon his first such conviction, shall be guilty of a misdemeanor and shall be fined not more than $5,000 or imprisoned for not more than one year, or both; and

(B) upon his second or any subsequent such conviction, shall be guilty of a felony and shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(2) In any case in which the court determines that a violation described in paragraph (1) includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

(3) Any person or entity convicted of a felony under this section or under section 408 of this title may not be certified as a payee under section 1383(a)(2) of this title.

(As amended Oct. 9, 1984, Pub. L. 98-460, § 16(c)(1), 98 Stat. 1810.)

AMENDMENTS

1984—Pub. L. 98-460 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-460 effective Oct. 9, 1984, and applicable with respect to violations occurring on or after such date, see section 16(d) of Pub. L. 98-460, set out as a note under section 405 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 408 of this title.

§ 1383b. Administration

[*See main edition for text of (a) and (b)*]

(c) Notification of review

In any case in which the Secretary initiates a review under this subchapter, similar to the continuing disability reviews authorized for purposes of subchapter II of this chapter under section 421(i) of this title, the Secretary shall notify the individual whose case is to be reviewed in the same manner as required under section 421(i)(4) of this title.

(As amended Oct. 9, 1984, Pub. L. 98-460, § 6(b), 98 Stat. 1802.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-460 added subsec. (c).

INSTITUTION OF NOTIFICATION SYSTEM

For provisions requiring the Secretary to institute the system of notification required by subsec. (c) of this section as soon as practicable after Oct. 9, 1984, see section 6(c) of Pub. L. 98-460, set out as a note under section 421 of this title.

§ 1383c. Eligibility for medical assistance of aged, blind, or disabled individuals under State's medical assistance plan

(a) Determination by Secretary pursuant to agreement between Secretary and State; costs

The Secretary may enter into an agreement with any State which wishes to do so under which he will determine eligibility for medical assistance in the case of aged, blind, or disabled individuals under such State's plan approved under subchapter XIX of this chapter. Any such agreement shall provide for payments by the State, for use by the Secretary in carrying out the agreement, of an amount equal to one-half of the cost of carrying out the agreement, but in computing such cost with respect to individuals eligible for benefits under this subchapter, the Secretary shall include only those costs which are additional to the costs incurred in carrying out this subchapter.

(b) Preservation of benefit status for certain disabled widows and widowers

(1) An eligible disabled widow or widower (described in paragraph (2)) who is entitled to a widow's or widower's insurance benefit based on a disability for any month under section 402(e) or (f) of this title but is not eligible for benefits under this subchapter in that month, and who applies for the protection of this subsection under paragraph (3), shall be deemed for purposes of subchapter XIX of this chapter to be an individual with respect to whom benefits under this subchapter are paid in that month if he or she—

(A) has been continuously entitled to such widow's or widower's insurance benefits from the first month for which the increase described in paragraph (2)(C) was reflected in such benefits through the month involved, and

(B) would be eligible for benefits under this subchapter in the month involved if the amount of the increase described in paragraph (2)(C) in his or her widow's or widower's insurance benefits, and any subsequent cost-of-living adjustments in such benefits under section 415(i) of this title, were disregarded.

(2) For purposes of paragraph (1), the term "eligible disabled widow or widower" means an individual who—

(A) was entitled to a monthly insurance benefit under subchapter II of this chapter for December 1983,

(B) was entitled to a widow's or widower's insurance benefit based on a disability under section 402(e) or (f) of this title for January 1984 and with respect to whom a benefit under this subchapter was paid in that month, and

(C) because of the increase in the amount of his or her widow's or widower's insurance benefits which resulted from the amendments made by section 134 of the Social Security Amendments of 1983 (Public Law 98-21) (eliminating the additional reduction factor for disabled widows and widowers under age 60), was ineligible for benefits under this subchapter in the first month in which such increase was paid to him or her (and in which a retroactive payment of such increase for prior months was not made).

(3) This subsection shall only apply to an individual who files a written application for protection under this subsection, in such manner and form as the Secretary may prescribe, during the 15-month period beginning with April 1986.

(4) For purposes of this subsection, the term "benefits under this subchapter" includes payments of the type described in section 1382e(a) of this title or of the type described in section 212(a) of Public Law 93-66.

(c) Loss of benefits upon entitlement to child's insurance benefits based on disability

If any individual who has attained the age of 18 and is receiving benefits under this subchapter on the basis of blindness or a disability which began before he or she attained the age of 22—

(1) becomes entitled, on or after the effective date of this subsection, to child's insurance benefits which are payable under section 402(d) of this title on the basis of such disability or to an increase in the amount of the child's insurance benefits which are so payable, and

(2) ceases to be eligible for benefits under this subchapter because of such child's insurance benefits or because of the increase in such child's insurance benefits,

such individual shall be treated for purposes of subchapter XIX of this chapter as receiving benefits under this subchapter so long as he or she would be eligible for benefits under this subchapter in the absence of such child's insurance benefits or such increase.

(As amended Apr. 7, 1986, Pub. L. 99-272, title XII, § 12202(a), 100 Stat. 290; Nov. 10, 1986, Pub. L. 99-643, § 6(a), 100 Stat. 3578.)

REFERENCES IN TEXT

Section 134 of the Social Security Amendments of 1983 (Public Law 98-21), referred to in subsec. (b)(2)(C), is section 134 of Pub. L. 98-21, title I, Apr. 20, 1983, 97 Stat. 97, which amended section 402 of this title and enacted provisions set out as a note under section 402 of this title.

Section 212(a) of Public Law 93-66, referred to in subsec. (b)(4), is section 212(a) of Pub. L. 93-66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1362 of this title.

The effective date of this subsection, referred to in subsec. (c)(1), is July 1, 1987, except as otherwise provided. See section 10(b) of Pub. L. 99-643, set out as an Effective Date of 1986 Amendments note under section 1396a of this title.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-272, § 12202(a)(1), designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 99-272, § 12202(a)(2), added subsec. (b).

Subsec. (c). Pub. L. 99-643 added subsec. (c).

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99-643 effective July 1, 1987, except as otherwise provided, see section 10(b) of Pub. L. 99-643, set out as a note under section 1396a of this title.

Section 12202(c) of Pub. L. 99-272 provided that: "The amendment made by subsection (a)(2) [amending this section] shall not have the effect of deeming an individual eligible for medical assistanee for any month which begins less than two months after the date of the enactment of this Act [Apr. 7, 1986]."

STATE DETERMINATIONS

Section 6(b) of Pub. L. 99-643 provided that: "Any determination required under section 1634(c) of the Social Security Act [42 U.S.C. 1383c(c)] with respect to whether an individual would be eligible for benefits under title XVI of such Act [42 U.S.C. 1381 et seq.] in the absence of children's benefits (or an increase thereof) shall be made by the appropriate State agency."

IDENTIFICATION OF POTENTIAL BENEFICIARIES UNDER SUBSECTION (b) OF THIS SECTION

Section 12202(b) of Pub. L. 99-272 provided that:

"(1) As soon as possible after the date of the enactment of this Act [Apr. 7, 1986], the Secretary of Health and Human Services shall provide each State with the names of all individuals receiving widow's or widower's insurance benefits under subsection (e) or (f) of section 202 of the Social Security Act [42 U.S.C. 402(e), (f)] based on a disability who might qualify for medical assistance under the plan of that State approved under title XIX of such Act [42 U.S.C. 1396 et seq.] by reason of the application of section 1634(b) of the Social Security Act [42 U.S.C. 1383c(b)].

"(2) Each State shall—

"(A) using the information so provided and any other information it may have, promptly notify all individuals who may qualify for medical assistance under its plan by reason of such section 1634(b) of their right to make application for such assistance,

"(B) solicit their applications for such assistance, and

"(C) make the necessary determination of such individuals' eligibility for such assistance under such section and under such title XIX."

SECTION REFERRED TO IN OTHER SECTIONS

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

SUBCHAPTER XVIII—HEALTH INSURANCE FOR THE AGED AND DISABLED

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 242b, 254b, 254c, 254e, 254h, 273, 274c, 300e-6, 300t-12, 300bb-2, 300bb-3, 401, 416, 417, 418, 423, 426-1, 907a, 1301, 1306, 1320a-1, 1320a-2, 1320a-3, 1320a-5, 1320a-7, 1320a-7a, 1320a-8, 1320b-4, 1320b-5, 1320b-8, 1320c-2, 1320c-3, 1320c-4, 1320c-5, 1320c-9, 1320c-10, 1320c-13, 1395x, 1395gg, 1396a, 1396b, 1396d, 1396i, 1396*l*, 1396m, 1997, 3013, 3035b, 10805 of this title; title 2 section 906; title 7 sections 2012, 3178; title 10 sections 1079, 1095; title 12 sections 1715w, 1715z-7; title 24 section 170a; title 25 section 1622; title 26 sections 162, 1402; title 29 sections 1162, 1163; title 31 section 3803; title 38 sections 4108, 5053; title 45 section 231r; title 49 App. section 1607a.

§ 1395b. Option to individuals to obtain other health insurance protection

TASK FORCE ON LONG-TERM HEALTH CARE POLICIES

Pub. L. 99-272, title IX, § 9601, Apr. 7, 1986, 100 Stat. 221, provided that:

"(a) ESTABLISHMENT OF TASK FORCE.—(1) [sic] The Secretary of Health and Human Services (hereinafter in this section referred to as the 'Secretary') shall establish a Task Force on Long-Term Health Care Policies (hereinafter in this section referred to as the 'Task Force'). The Task Force shall be established not later than 60 days after the date of the enactment of this Act [Apr. 7, 1986] and in consultation with the National Association of Insurance Commissioners.

"(b) COMPOSITION OF TASK FORCE.—The Task Force shall be composed of 18 members, which shall include—

"(1) two members representing the National Association of Insurance Commissioners,

"(2) three members representing Federal and State agencies with responsibilities relating to health or the elderly,

"(3) three members representing private insurers,

"(4) three members from organizations representing consumers or the elderly, and

"(5) three members from organizations representing providers of long-term health care services.

The Secretary shall designate a member of the Task Force as chair.

"(c) DEVELOPMENT OF RECOMMENDATIONS.—The Task Force shall develop recommendations for long-term health care policies, including recommendations designed—

"(1) to limit marketing and agent abuse for those policies,

"(2) to assure the dissemination of such information to consumers as is necessary to permit informed choice in purchasing the policies and to reduce the purchase of unnecessary or duplicative coverage,

"(3) to assure that benefits provided under the policies are reasonable in relationship to premiums charged, and

"(4) to promote the development and availability of long-term health care policies which meet these recommendations.

"(d) REPORT.—Not later than 18 months after the date of the enactment of this Act [Apr. 7, 1986], the Task Force shall report to the Secretary, to the Committee on Energy and Commerce of the House of Representatives and to the Committee on Labor and Human Resources of the Senate respecting—

"(1) the recommendations developed under subsection (c), including an explanation of the reasons for their selection, and

"(2) such recommendations for additional activities respecting long-term health care policies as the Task Force finds appropriate.

The Secretary, in cooperation with the National Association of Insurance Commissioners, shall provide for the dissemination of the report to each of the States.

"(e) TERMINATION OF TASK FORCE.—The Task Force shall terminate 90 days after the date of submission of the report required under subsection (d).

"(f) REPORTS OF SECRETARY.—The Secretary shall transmit to the Committee on Energy and Commerce of the House of Representatives and to the Committee on Labor and Human Resources of the Senate two reports on—

"(1) actions taken by the States to implement the recommendations developed under this section and to recommend additional action; and

"(2) recommendations for legislative and administrative action, if any, needed to respond to issues raised by the Task Force or to improve consumer protection with respect to long-term health care policies.

The first report shall be transmitted 18 months after the date the report is made under subsection (d), and the second report shall be transmitted 18 months later.

"(g) LONG-TERM HEALTH CARE POLICY DEFINED.—In this section, the term 'long-term health care policy' means an insurance policy, or similar health benefits plan, which is designed for or marketed as providing (or making payments for) health care services (such as nursing home care and home health care) or related services (which may include home and community-based services), or both, over an extended period of time.

"(h) ASSURANCE OF STATES' JURISDICTION.—Nothing in this section shall be construed as recommending Federal preemption of the States in overseeing the operation and regulation of insurance carriers in their respective jurisdictions."

§ 1395b-1. Incentives for economy while maintaining or improving quality in the provision of health services

(a) Grants and contracts to develop and engage in experiments and demonstration projects

(1) The Secretary of Health and Human Services is authorized, either directly or through grants to public or private agencies, institutions, and organizations or contracts with public or private agencies, institutions, and organizations, to develop and engage in experiments and demonstration projects for the following purposes:

[*See main edition for text of (A) to (K)*]

For purposes of this subsection, "health programs established by this chapter" means the program established by this subchapter and a program established by a plan of a State approved under subchapter XIX of this chapter.

[*See main edition for text of (2); (b)*]

(As amended Pub. L. 98-369, div. B, title III, § 2331(b), July 18, 1984, 98 Stat. 1058.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-369 substituted "grants to public or private agencies" for "grants to public or nonprofit private agencies" in provisions preceding subpar. (A).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, see section 2331(c) of Pub. L. 98-369, set out as a note under section 1310 of this title.

ALZHEIMER'S DISEASE DEMONSTRATION PROJECTS

Pub. L. 99-509, title IX, § 9342, Oct. 21, 1986, 100 Stat. 2038, provided that:

"(a) DEMONSTRATION PROJECTS.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall conduct at least 5 (and not more than 10) demonstration projects to determine the effectiveness, cost, and impact on health status and functioning of providing comprehensive services for individuals entitled to benefits under title XVIII of the Social Security Act [this subchapter] (in this section referred to as 'medicare beneficiaries') who are victims of Alzheimer's disease or related disorders.

"(b) SERVICES UNDER DEMONSTRATION PROJECTS.—The services provided under demonstration projects must be designed to meet the specific needs of Alzheimer's disease patients and may include—

"(1) case management services,

"(2) home and community-based services,

"(3) mental health services,

"(4) outpatient drug therapy,

"(5) respite care and other supportive services and counseling for family,

"(6) adult day care services, and

"(7) other in-home services.

"(c) CONDUCT OF PROJECTS.—The demonstration projects shall—

"(1) each be conducted over a period of 3 years;

"(2) provide each medicare beneficiary with a comprehensive medical and mental status evaluation upon entering the project and at discharge.

"(3) be conducted by an entity which either directly or by contract is able to provide such comprehensive evaluations and the additional services (described in subsection (b)) covered by the project;

"(4) be conducted in sites which are chosen so as to be geographically diverse and located in States with a high proportion of medicare beneficiaries and in areas readily accessible to a significant number of medicare beneficiaries; and

"(5) involve community outreach efforts at each site to enroll the maximum number of medicare beneficiaries in each project.

"(d) EVALUATION AND REPORTS.—The Secretary shall provide for an evaluation of the demonstration projects and shall submit to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

"(1) a preliminary report during the third year of the projects, which report shall include a description of the sites at which the projects are being conducted and the services being provided at the different sites, and

"(2) a final report upon completion of the projects, which report shall include recommendations for appropriate legislative changes.

"(f) FUNDING.—Expenditures (not to exceed $40,000,000 for the projects and $2,000,000 for the evaluation of the projects) made for the demonstration projects shall be made from the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act [42 U.S.C. 1395t]). Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section.

"(g) WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with the requirements of title XVIII of the Social Security Act [this subchapter] to the extent and for the period the Secretary finds necessary for the conduct of the demonstration projects."

SPECIAL TREATMENT OF STATES FORMERLY UNDER WAIVER

For treatment of hospitals in States which have had a waiver approved under this section, upon termination of waiver, see section 9202(j) of Pub. L. 99-272, as amended, set out as a note under section 1395ww of this title.

EXTENSION OF CERTAIN MEDICARE MUNICIPAL HEALTH SERVICES DEMONSTRATION PROJECTS

Pub. L. 99-272, title IX, § 9215, Apr. 7, 1986, 100 Stat. 180, provided that: "The Secretary of Health and Human Services shall extend, for a period of three additional years, approval of four municipal health services demonstration projects (located in Baltimore, Cincinnati, Milwaukee, and San Jose) authorized under section 402(a) of the Social Security Amendments of 1967 [42 U.S.C. 1395b-1(a)]."

DEMONSTRATION PROGRAM FOR REDUCTION OF DISABILITY AND DEPENDENCY THROUGH PROVISION OF PREVENTIVE HEALTH SERVICES UNDER MEDICARE

Pub. L. 99-272, title IX, § 9314, Apr. 7, 1986, 100 Stat. 194, as amended by Pub. L. 99-509, title IX, § 9344(d), Oct. 21, 1986, 100 Stat. 2042, provided that:

"(a) DEMONSTRATION PROGRAM.—The Secretary of Health and Human Services (hereinafter in this section referred to as the 'Secretary') shall establish a 4-year demonstration program designed to reduce disability and dependency through the provision of preventive health services to individuals entitled to benefits under title XVIII of the Social Security Act [this subchapter] (hereinafter in this section referred to as 'medicare beneficiaries').

"(b) PREVENTIVE HEALTH SERVICES UNDER DEMONSTRATION PROGRAM.—The preventive health services to be made available under the demonstration program shall include—

"(1) health screenings,

"(2) health risk appraisals,

"(3) immunizations, and

"(4) counseling on and instruction in—

"(A) diet and nutrition,

"(B) reduction of stress,

"(C) exercise and exercise programs,

"(D) sleep regulation,

"(E) injury prevention,

"(F) prevention of alcohol and drug abuse,

"(G) prevention of mental health disorders,

"(H) self-care, including use of medication, and

"(I) reduction or cessation of smoking.

"(c) CONDUCT OF PROGRAM.—The demonstration program shall—

"(1) be conducted under the direction of accredited public or private nonprofit schools of public health or preventive medicine departments accredited by the Council on Education for Public Health;

"(2) be conducted in no fewer than five sites (at least one of which shall serve a rural area), which sites shall be chosen so as to be geographically diverse and shall be readily accessible to a significant number of medicare beneficiaries;

"(3) involve community outreach efforts at each site to enroll the maximum number of medicare beneficiaries in the program; and

"(4) be designed—

"(A) to test alternative methods of payment for preventive health services, including payment on a prepayment basis as well as payment on a fee-for-service basis,

"(B) to permit a variety of appropriate health care providers to furnish preventive health services, including physicians, health educators, nurses, allied health personnel, dieticians, and clinical psychologists, and

"(C) to facilitate evaluation under subsection (d).

"(d) EVALUATION.—The Secretary shall evaluate the demonstration project in order to determine—

"(1) the short-term and long-term costs and benefits of providing preventive health services for medicare beneficiaries, including any reduction in inpatient services resulting from providing the services, and

"(2) what practical mechanisms exist to finance preventive health services under title XVIII of the Social Security Act (this subchapter].

"(e) REPORTS TO CONGRESS.—(1) Not later than three years after the date of the enactment of this Act [Apr. 7, 1986], the Secretary shall submit a preliminary report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and to the Committee on Finance of the Senate on the progress made in the demonstration program, including a description of the sites at which the program is being conducted and the preventive health services being provided at the different sites.

"(2) Not later than five years after the date of the enactment of this Act [Apr. 7, 1986], the Secretary shall submit a final report to those Committees on the demonstration program and shall include in the report—

"(A) the evaluation described in subsection (d), and

"(B) recommendations for appropriate legislative changes to incorporate payment for cost-effective preventive health services into the medicare program.

"(f) FUNDING.—Expenditures made for the demonstration program shall be made from the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act [42 U.S.C. 1395t]). Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section. Funding for the administrative costs of the demonstration program shall not exceed $5,900,000 over the duration of the program.

"(g) WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with such requirements of title XVIII of the Social Security Act [this subchapter] to the extent and for the period the Secretary finds necessary for the conduct of the demonstration program."

[Section 9344(d) of Pub. L. 99-509 provided in part that amendment of this note by Pub. L. 99-509 is effective as if included in section 9314 of Pub. L. 99-272 when that section was enacted.]

PAYMENT FOR COSTS OF HOSPITAL-BASED MOBILE INTENSIVE CARE UNITS

Section 2320 of Pub. L. 98-369 provided that:

"(a)(1) In the case of a project described in subsection (b), the Secretary of Health and Human Services shall provide, except as provided in paragraph (2), that the amount of payments to hospitals covered under the project during the period described in paragraph (3) shall include payments for their operation of hospital-based mobile intensive care units (as defined by State statute) if the State provides satisfactory assurances that the total amount of payments to such hospitals under titles XVIII and XIX of the Social Security Act [this subchapter and subchapter XIX of this chapter] under the demonstration project (including any such additional amount of payment) would not exceed the total amount of payments which would have been paid under such titles if the demonstration project were not in effect.

"(2) Paragraph (1) shall not apply if the State in which the project is located notifies the Secretary, within 30 days after the date of the enactment of this section [July 18, 1984], that the State does not want paragraph (1) to apply to that project.

"(3) The period referred to in paragraph (1) begins on the date of the enactment of this section and continues so long as the Secretary continues the Statewide waiver referred to in subsection (b), but in no case ends earlier than 90 days after the date final regulations to implement section 1886(c) of the Social Security Act [42 U.S.C. 1395ww(c)] are published.

"(b) The project referred to in subsection (a) is the statewide demonstration project established in the State of New Jersey under section 402 of the Social Security Amendments of 1967, as amended by section 222(b) of the Social Security Amendments of 1972 (Public Law 92-603) [this section], which project provides for payments to hospitals in the State on a prospective basis and related to a classification of patients by diagnosis-related groups.

"(c) Payment for services described in this section shall be considered to be payments for services under part A of title XVIII of the Social Security Act [part A of this subchapter].'

CONTINUATION OF SECRETARY'S AUTHORITY REGARDING EXPERIMENTS AND DEMONSTRATION PROJECTS

Pub. L. 98-21, title VI, § 603(b), Apr. 20, 1983, 97 Stat. 167, provided that:

"(1) Except as provided in paragraph (2), the amendments made by this title [amending sections 1320a-1, 1320c-2, 1395f, 1395l-2, 1395n, 1395r, 1395v, 1395w, 1395x, 1395y, 1395cc, 1395mm, 1395oo, 1395rr, 1395ww, and 1395xx of this title, enacting provisions set out as notes under sections 1395b-1, 1395r, 1395x, 1395y, 1395cc, and 1395ww of this title, and amending provisions set out as a note under section 1395x of this title] shall not affect the authority of the Secretary to develop, carry out, or continue experiments and demonstration projects.

"(2) The Secretary shall provide that, upon the request of a State which has a demonstration project, for payment of hospitals under title XVIII of the Social Security Act [this subchapter] approved under section 402(a) of the Social Security Amendments of 1967 [subsec. (a) of this section] or section 222(a) of the Social Security Amendments of 1972 [set out as a note below], which (A) is in effect as of March 1, 1983, and (B) was entered into after August 1982 (or upon the request of another party to demonstration project agreement), the terms of the demonstration agreement shall be modified so that the demonstration project is not required to maintain the rate of increase in medicare hospital costs in that State below the national rate of increase in medicare hospital costs."

ALTERNATIVE CARE DEMONSTRATION PROJECTS IN HOSPITALS SHORT OF SKILLED NURSING FACILITIES

Pub. L. 98-21, title VI, § 603(d), Apr. 20, 1983, 97 Stat. 168, provided that: "The Secretary shall conduct demonstrations with hospitals in areas with critical shortages of skilled nursing facilities to study the feasibility of providing alternative systems of care or methods of payment."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395*ll*, 1395ww of this title.

PART A—HOSPITAL INSURANCE BENEFITS FOR THE AGED AND DISABLED

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 254n, 402, 426, 426-1, 426a, 907, 1320a-3, 1320a-7a, 1320b-1, 1320c-13, 1395*l*, 1395o, 1395p, 1395q, 1395u, 1395x, 1395y, 1395aa, 1395cc, 1395*ff*, 1305*ll*, 1395mm, 1395pp, 1395rr, 1395ss, 1395vv, 1395ww, 1396a, 1396b, 1396d, 1396n of this title; title 10 sections 1086, 1087; title 31 section 3806; title 38 section 613; title 45 section 231f.

§ 1395c. Description of program

The insurance program for which entitlement is established by sections 426 and 426-1 of this title provides basic protection against the costs of hospital, related post-hospital, home health services, and hospice care in accordance with this part for (1) individuals who are age 65 or over and are eligible for retirement benefits under subchapter II of this chapter (or would be eligible for such benefits if certain government employment were covered employment under such subchapter) or under the railroad retirement system, (2) individuals under age 65 who have been entitled for not less than 24 months to benefits under subchapter II of this chapter (or would have been so entitled to such benefits if certain government employment were covered employment under such subchapter) or under the railroad retirement system on the basis of a disability, and (3) certain individuals who do not meet the conditions specified in either clause (1) or (2) but who are medically determined to have end stage renal disease.

(As amended Apr. 7, 1986, Pub. L. 99-272, title XIII, § 13205(b)(2)(C)(i), 100 Stat. 317.)

AMENDMENTS

1986—Pub. L. 99-272 substituted "government employment" for "Federal employment" in cls. (1) and (2).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 effective after Mar. 31, 1986, with no individual to be considered under disability for any period beginning before Apr. 1, 1986, for purposes of hospital insurance benefits, see section 13205(d)(2) of Pub. L. 99-272, set out as a note under section 410 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 122(h)(1) of Pub. L. 97-248, as amended by Pub. L. 99-272, title IX, § 9123(a), Apr. 7, 1986, 100 Stat. 168, provided that: "The amendments made by this section [amending sections 1395c to 1395f, 1395h, and 1395x to 1395cc of this title and section 231f of Title 45, Railroads, and enacting provisions set out as notes under sections 1395b-1 and 1395f of this title] apply to hospice care provided on or after November 1, 1983."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred te in title 38 section 629.

§ 1395d. Scope of benefits

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 122(h) of Pub. L. 97-248 [enacting subsecs. (a)(4) and (d) of this section] applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97-248, as amended, set out as a note under section 1395c of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395e, 1395f, 1395x, 1396b, 1396d of this title.

§ 1395e. Deductibles and coinsurance

[*See main edition for text of* (a)]

(b) Inpatient hospital deductible; application

(1) The inpatient hospital deductible for 1987 shall be $520. The inpatient hospital deductible for any succeeding year shall be an amount equal to the inpatient hospital deductible for the preceding calendar year, changed by the applicable percentage increase (as defined in section 1395ww(b)(3)(B) of this title) which is applied under section 1395ww(d)(3)(A) of this title for discharges in the fiscal year that begins on October 1 of such preceding calendar year, and adjusted to reflect changes in real case mix (determined on the basis of the most recent case mix data available). Any amount determined under the preceding sentence which is not a multiple of $4 shall be rounded to the nearest multiple of $4 (or, if it is midway between two multiples of $4, to the next higher multiple of $4).

(2) The Secretary shall promulgate the inpatient hospital deductible and all coinsurance amounts under this section between September

1 and September 15 of the year preceding the year to which they will apply.

(3) The inpatient hospital deductible for a year shall apply to—

(A) the deduction under the first sentence of subsection (a)(1) of this section for the year in which the first day of inpatient hospital services occurs in a spell of illness, and

(B) te the coinsurance amounts under subsection (a) of this section for inpatient hospital services and post-hospital extended care services furnished in that year.

(As amended Apr. 7, 1986, Pub. L. 99-272, title IX, § 9125(a), 100 Stat. 168; Oct. 21, 1986, Pub. L. 99-509, title IX, § 9301(a), 100 Stat. 1981.)

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-509 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

"(1) The inpatient hospital deductible which shall be applicable for the purposes of subsection (a) of this section shall be $40 in the case of any spell of illness beginning before 1969.

"(2) The Secretary shall, between July 1 and September 15 of 1968, and of each year thereafter, determine and promulgate the inpatient hospital deductible which shall be applicable for the purposes of subsection (a) of this section in the case of any inpatient hospital services or post-hospital extended care services furnished during the succeeding calendar year. Such inpatient hospital deductible shall be equal to $45 multiplied by the ratio of (A) the current average per diem rate for inpatient hospital services for the calendar year preceding the promulgation, to (B) the current average per diem rate for such services for 1966. Any amount determined under the preceding sentence which is not a multiple of $4 shall be rounded to the nearest multiple of $4 (or, if it is midway between two multiplies of $4, to the next higher multiple of $4). The current average per diem rate for any year shall be determined by the Secretary on the basis of the best information available to him (at the time the determination is made) as to the amounts paid under this part on account of inpatient hospital services furnished during such year, by hospitals which have agrcements in effect under section 1395cc of this title, to individuals who are entitled to hospital insurance benefits under section 426 of this title, plus the amount which would have been so paid but for subsection (a)(1) of this section."

Subsec. (b)(2). Pub. L. 99-272 substituted "September 15" for "October 1".

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 9301(b) of Pub. L. 99-509 provided that: "The amendment made by subsection (a) [amending this section] shall apply to inpatient hospital services and post-hospital extended care services furnished on or after January 1, 1987, and to the monthly premium (under part A of title XVIII of the Social Security Act [this part]) for months beginning with January 1987."

Section 9125(b) of Pub. L. 99-272 provided that: "The amendment made by this scction [amending this section] shall apply to calendar years after 1985."

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 [enacting subsec. (a)(4) of this section] applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97-248, as amended, set out as a note under section 1395c of this title.

PROMULGATION OF NEW DEDUCTIBLE

Section 9301(c) of Pub. L. 99-509 provided that: "The Secretary of Health and Human Services shall provide, within 30 days after the date of the enactment of this Act [Oct. 21, 1986], for the publication of the inpatient hospital deductible, the coinsurance amounts for inpatient hospital services and post-hospital extended care services and the monthly part A premiums for 1987, as modified under the amendment made by subsection (a) [amending this section]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395f, 1395i-2, 1395l, 1395x, 1395cc, 1395ww, 1398d of this title; title 38 sections 610, 612.

§ 1395f. Conditions of and limitations on payment for services

(a) Requirement of requests and certifications

Except as provided in subsections (d) and (g) of this section and in section 1395mm of this title, payment for services furnished an individual may be made only te providers of services which are eligible therefor under section 1395cc of this title and only if—

[*See main edition for text of (1)*]

(2) a physician certifies (and recertifies, where such services are furnished over a period of time, in such cases, with such frequency, and accompanied by such supporting material, appropriate to the case involved, as may be provided by regulations, except that the first of such recertifications shall be required in each case of inpatient hospital services not later than the 20th day of such period) that—

[*See main edition for text of (A)*]

(B) in the case of post-hospital extended care services, such services are or were required to be given because the individual needs or needed on a daily basis skilled nursing care (provided directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services, which as a practical matter can only be provided in a skilled nursing facility on an inpatient basis, for any of the conditions with respect to which he was receiving inpatient hospital services (or services which would constitute inpatient hospital services if the institution met the requirements of paragraphs (6) and (9) of section 1395x(e) of this title) prior to transfer to the skilled nursing facility or for a condition requiring such extended care services which arose after such transfer and while he was still in the facility for treatment of the condition or conditions for which he was receiving such inpatient hospital services;

(C) in the case of home health services, such services are or were required because the individual is or was confined to his home (except when receiving items and services referred to in section 1395x(m)(7) of this title) and needs or needed skilled nursing care on an intermittent basis or physical or speech therapy or, in the case of an individual who has been furnished home health services based on such a need and who no longer has such a need for such care or therapy, continues or continued te need

occupational therapy; a plan for furnishing such services to such individual has been established and is periodically reviewed by a physician; and such services are or were furnished while the individual was under the care of a physician; or

(D) in the case of inpatient hospital services in connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth, the individual, because of his underlying medical condition and clinical status or because of the severity of the dental procedure, requires hospitalization in connection with the provision of such services;

(3) with respect to inpatient hospital services (other than inpatient psychiatric hospital services) which are furnished over a period of time, a physician certifies that such services are required to be given on an inpatient basis for such individual's medical treatment, or that inpatient diagnostic study is medically required and such services are necessary for such purpose, except that (A) such certification shall be furnished only in such cases, with such frequency, and accompanied by such supporting material, appropriate to the cases involved, as may be provided by regulations, and (B) the first such certification required in accordance with clause (A) shall be furnished no later than the 20th day of such period;

[*See main edition for text of (4)*]

(5) with respect to inpatient hospital services furnished such individual after the 20th day of a continuous period of such services and with respect to post-hospital extended care services furnished after such day of a continuous period of such services as may be prescribed in or pursuant to regulations, there was not in effect, at the time of admission of such individual to the hospital or skilled nursing facility, as the case may be, a decision under section 1395cc(d) of this title (based on a finding that utilization review of long-stay cases is not being made in such hospital or facility);

(6) with respect to inpatient hospital services or post-hospital extended care services furnished such individual during a continuous period, a finding has not been made (by the physician members of the committee or group, as described in section 1395x(k)(4) of this title, including any finding made in the course of a sample or other review of admissions to the institution) pursuant to the system of utilization review that further inpatient hospital services or further post-hospital extended care services, as the case may be, are not medically necessary; except that, if such a finding has been made, payment may be made for such services furnished before the 4th day after the day on which the hospital or skilled nursing facility, as the case may be, received notice of such finding; and

(7) in the case of hospice care provided an individual—

(A)(i) in the first 90-day period—

(I) the individual's attending physician (as defined in section 1395x(dd)(3)(B) of this title), and

(II) the medical director (or physician member of the interdisciplinary group described in section 1395x(dd)(2)(B) of this title) of the hospice program providing (or arranging for) the care,

each certify, not later than two days after hospice care is initiated, that the individual is terminally ill (as defined in section 1395x(dd)(3)(A) of this title), and

(ii) in a subsequent 90- or 30-day period, the medical director or physician described in clause (i)(II) recertifies at the beginning of the period that the individual is terminally ill;

(B) a written plan for providing hospice care with respect to such individual has been established (before such care is provided by, or under arrangements made by, that hospice program) and is periodically reviewed by the individual's attending physician and by the medical director (and the interdisciplinary group described in section 1395x(dd)(2)(B) of this title) of the hospice program; and

(C) such care is being or was provided pursuant to such plan of care.

To the extent provided by regulations, the certification and recertification requirements of paragraph (2) shall be deemed satisfied where, at a later date, a physician makes certification of the kind provided in subparagraph (A), (B), (C), or (D) of paragraph (2) (whichever would have applied), but ouly where such certification is accompanied by such medical and other evidence as may be required by such regulatious. With respect to the physician certification required by paragraph (2) for home health services furnished to any individual by a home health agency (other than an agency which is a governmental entity) and with respect to the establishment and review of a plan for such services, the Secretary shall prescribe regulations which shall become effective no later than July 1, 1981, and which prohibit a physician who has a significant ownership interest in, or a significant financial or contractual relationship with, such home health agency from performing such certification and from establishing or reviewing such plan, except that such prohibition shall not apply with respect to a home health agency which is a sole community home health agency (as determined by the Secretary). For purposes of the preceding sentence, service by a physician as an uncompensated officer or director of a home health agency shall not constitute having a significant ownership interest in, or a significant financial or contractual relationship with, such agency.

(b) Amount paid to provider of services

The amount paid to any provider of services (other than a hospice program providing hospice care and other than a home health agency with respect to durable medical equipment) with respect to services for which payment may be made under this part shall, subject to the

provisions of sections 1395e and 1395ww of this title, be—

[*See main edition for text of (1)*]

(2) if such services are furnished by a public provider of services, or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this paragraph), free of charge or at nominal charges to the public, the amount determined on the basis of those items (specified in regulations prescribed by the Secretary) included in the determination of such reasonable cost which the Secretary finds will provide fair compensation to such provider for such services; or

[*See main edition for text of (3)*]

In the case of any State which has had such a demonstration project reimbursement system in continuous operation since July 1, 1977, the Secretary shall provide under paragraph (3) for continuation of reimbursement to hospitals in the State under such system until the first day of the seventh month beginning after the date the Secretary determines and notifies the Governor of the State that either of the conditions described in subparagraph (A) or (B) of such paragraph has occurred.

[*See main edition for text of (c) to (f)*]

(g) Payments to physicians for services rendered in teaching hospitals

For purposes of services for which the reasonable cost thereof is determined under section 1395x(v)(1)(D) of this title (or would be if section 1395ww of this title did not apply), payment under this part shall be made to such fund as may be designated by the organized medical staff of the hospital in which such services were furnished or, if such services were furnished in such hospital by the faculty of a medical school, to such fund as may be designated by such faculty, but only if—

[*See main edition for text of (1) and (2)*]

(h) Payment for specified hospital services provided in Veterans' Administration hospitals; amount of payment

[*See main edition for text of (1)*]

(2) Payment for services described in paragraph (1) shall be in an amount equal to the charge imposed by the Veterans' Administration for such services, or (if less) the amount that would be payable for such services under subsection (b) of this section and section 1395ww of this title (as estimated by the Secretary). Any such payment shall be made to the entity to which payment for the services involved would have been payable, if payment for such services had been made by the individual receiving the services involved (or by another private person acting on behalf of such individual).

(i) Payment for hospice care

(1)(A) Subject to the limitation under paragraph (2) and the provisions of section 1395e(a)(4) of this title, the amount paid to a hospice program with respect to hospice care for which payment may be made under this part shall be an amount equal to the costs which are reasonable and related to the cost of providing hospice care or which are based on such other tests of reasonableness as the Secretary may prescribe in regulations (including those authorized under section 1395x(v)(1)(A) of this title), except that no payment may be made for bereavement counseling and no reimbursement may be made for other counseling services (including nutritional and dietary counseling) as separate services.

(B) Notwithstanding subparagraph (A), for hospice care furnished on or after April 1, 1986, the daily rate of payment per day for routine home care shall be $63.17 and the daily rate of payment for other services included in hospice care shall be the daily rate of payment recognized under subparagraph (A) as of July 1, 1985, increased by $10.

(C) With respect to care and services furnished on or after October 1, 1986, the Secretary shall, not less often than annually, review and make appropriate adjustments to the payment rate for routine home care and the payment rates for other services included in hospice care based on the costs that are reasonable and related to the costs of furnishing such care and services. The Secretary shall report to Congress on October 1 each year on such review and such adjustments and on the adequacy of the rates under this paragraph to ensure participation by an adequate number of hospice programs under this subchapter.

(2)(A) The amount of payment made under this part for hospice care provided by (or under arrangements made by) a hospice program for an accounting year may not exceed the "cap amount" for the year (computed under subparagraph (B)) multiplied by the number of medicare beneficiaries in the hospice program in that year (determined under subparagraph (C)).

(B) For purposes of subparagraph (A), the "cap amount" for a year is $6,500, increased or decreased, for accounting years that end after October 1, 1984, by the same percentage as the percentage increase or decrease, respectively, in the medical care expenditure category of the Consumer Price Index for All Urban Consumers (United States city average), published by the Bureau of Labor Statistics, from March 1984 to the fifth month of the accounting year.

[*See main edition for text of (C)*]

(j) Elimination of lesser-of-cost-or-charges provision

(1) The lesser-of-cost-or-charges provisions (described in paragraph (2)) will not apply in the case of services provided by a class of provider of services if the Secretary determines and certifies to Congress that the failure of such provisions to apply to the services provided by that class of providers will not result in any increase in the amount of payments made for those services under this subchapter. Such change will take effect with respect to services furnished, or cost reporting periods of provid-

ers, on or after such date as the Secretary shall provide in the certification. Such change for a class of provider shall be discontinued if the Secretary determines and notifies Congress that such change has resulted in an increase in the amount of payments made under this subchapter for services provided by that class of provider.

(2) The lesser-of-cost-or-charges provisions referred to in paragraph (1) are as follows:

(A) Clause (B) of paragraph (1) and paragraph (2) of subsection (b) of this section.

(B) Subsection (k)(1)(B) of this section.

(C) So much of subparagraph (A) of section 1395*l*(a)(2) of this title as provides for payment other than of the reasonable cost of such services, as determined under section 1395x(v) of this title.

(D) Subclause (II) of clause (i) and clause (ii) of section 1395*l*(a)(2)(B) of this title.

(k) Payments to home health agencies for durable medical equipment

The amount paid to any home health agency with respect to durable medical equipment for which payment may be made under this part shall be—

(1) the lesser of—

(A) the reasonable cost of such equipment, as determined under section 1395x(v) of this title, or

(B) the customary charges with respect to such equipment,

less the amount the home health agency may charge as described in section 1395cc(a)(2)(A)(ii) of this title, but in no case may the payment for such equipment exceed 80 percent of such reasonable cost, or

(2) if such equipment is furnished by a public home health agency, or by another home health agency which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this paragraph), free of charge or at nominal charge to the public, 80 percent of the amount which the Secretary finds will provide fair compensation to the home health agency.

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, §§ 601(d), 602(b), (c), 97 Stat. 152, 163; Aug. 29, 1983, Pub. L. 98-90, 97 Stat. 606; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2308(b)(2)(A), 2321(a), (f), 2335(a), 2336(a), (b), 2354(b)(1), (c)(1)(A), 98 Stat. 1074, 1084, 1085, 1090, 1091, 1100, 1102; Nov. 8, 1984, Pub. L. 98-617, §§ 1(a), 3(a)(3), (b)(1), 98 Stat. 3294, 3295; Apr. 7, 1986, Pub. L. 99-272, title IX, § 9123(b), 100 Stat. 168.)

AMENDMENTS

1986—Subsec. (l)(1)(B). Pub. L. 99-272, § 9123(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "Notwithstanding subparagraph (A), the rate of payment per day for routine home care furnished during fiscal year 1985 shall be $53.17."

Subsec. (l)(1)(C). Pub. L. 99-272, § 9123(b)(2), substituted "1986" for "1985".

1984—Subsec. (a). Pub. L. 98-369, § 2354(b)(1), as amended by Pub. L. 98-617, § 3(a)(3), in concluding provisions, substituted "contractual" for "contractural".

Pub. L. 98-369, § 2336(b), in concluding provisions, inserted provision that such prohibition shall not apply with respect to a home health agency which is a sole community home health agency (as determined by the Secretary).

Pub. L. 98-369, § 2336(a), in concluding provisions, inserted provision that for purposes of the preceding sentence, service by a physician as an uncompensated officer or director of a home health agency shall not constitute having a significant ownership interest in, or a significant financial or contractual relationship with, such agency.

Pub. L. 98-369, § 2335(a)(4), in concluding provisions, substituted "or (D)" for "(D), or (E)".

Subsec. (a)(2)(B) to (E). Pub. L. 98-369, § 2335(a)(1), redesignated subpars. (C) to (E) as (B) to (D), respectively, and struck out former subpar. (B) which provided that payment could be made only if a physician certified, in the case of inpatient tuberculosis hospital services, that such services were required to be given on an inpatient basis, by or under the supervision of a physician, for the treatment of an individual for tuberculosis; and that such treatment could reasonably be expected to improve the condition for which such treatment was necessary or render the condition noncommunicable.

Subsec. (a)(3). Pub. L. 98-369, § 2335(a)(2), struck out "and inpatient tuberculosis hospital services" after "psychiatric hospital services".

Subsec. (a)(5) to (8). Pub. L. 98-369, § 2335(a)(3), redesignated pars. (6) to (8) as (5) to (7), respectively, and struck out former par. (5) which had provided that payment would be made only if, in the case of inpatient tuberculosis hospital services, the services were those which the records of the hospital indicate were furnished to the individual during periods when he was receiving treatment which could reasonably be expected to improve his condition or render it noncommunicable.

Subsec. (b). Pub. L. 98-369, § 2321(a)(1), inserted in provisions preceding par. (1) "and other than a home health agency with respect to durable medical equipment" after "hospice care".

Subsec. (b)(2). Pub. L. 98-369, § 2308(b)(2)(A), inserted ", or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this paragraph),".

Subsec. (b)(3). Pub. L. 98-369, § 2354(c)(1)(A), amended directory language of Pub. L. 96-449, § 903(a)(4), resulting in no change in text. See 1980 Amendment note below.

Subsec. (i)(1). Pub. L. 98-617, § 1(a), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (j)(2)(B) to (D). Pub. L. 98-369, § 2321(f), added subpar. (B) and redesignated former subpars. (B) and (C) as (C) and (D), respectively.

Subsec. (k). Pub. L. 98-369, § 2321(a)(2), added subsec. (k).

Subsec. (k)(2). Pub. L. 98-617, § 3(b)(1), inserted ", or by another home health agency which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this paragraph)," after "public home health agency" and "80 percent of" before "the amount".

1983—Subsec. (g). Pub. L. 98-21, § 602(b), inserted "(or would be if section 1395ww of this title did not apply)" after "section 1395x(v)(1)(D) of this title".

Subsec. (h)(2). Pub. L. 98-21, § 602(c), substituted "the amount that would be payable for such services under subsection (b) of this section and section 1395ww of this title" for "the reasonable costs for such services".

Subsec. (i)(2)(A). Pub. L. 98-90, § 1(1), struck out "located in a region (as defined by the Secretary)" after "a hospice program" and "for the region" after "'the cap amount'".

Subsec. (i)(2)(B). Pub. L. 98-90, § 1(2), amended subpar. (B) generally, substituting provisions establishing a hospice reimbursement cap amount of $6,500, indexed by the medical care component of the Consumer Price Index, for provisions which had established a cap of 40% of the estimated regional average medicare expenditure per beneficiary in the regular medicare program during the six months of life for persons dying of cancer.

Subsec. (j). Pub. L. 98-21, § 601(d)(2), added subsec. (j) by transferring and redesignating provisions formerly classified to subsec. (d) of section 1395ww of this title.

Subsec. (j)(2)(A). Pub. L. 98-21, § 601(d)(1), substituted "subsection (b) of this section" for "section 1395f(b) of this title".

1980—Subsec. (b)(3). Pub. L. 96-499, § 903(a)(4), as amended by Pub. L. 98-369, § 2354(c)(1)(A), added par. (3).

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 1(b) of Pub. L. 98-617 provided that: "The amendments made by this Act [probably means section 1 of Pub. L. 98-617, amending subsec. (i) of this section] shall apply to routine home care and other services included in hospice care furnished on or after October 1, 1984."

Section 3(c) of Pub. L. 98-617 provided that: "The amendments made by this section [amending sections 1395f, 1395l, 1395n, 1395r, 1395u, 1395x, 1395rr, 1395ww, 1396a, and 1396b of this title and amending provisions set out as notes under sections 1395h and 1395mm of this title] shall be effective as if they had been originally included in the Deficit Reduction Act of 1984 [Pub. L. 08-369]."

Seetion 2321(g) of Pub. L. 98-369 provided that: "The amendments made by this section [enacting section 1395zz of this title and amending sections 1395f, 1395l, 1395x, and 1395cc of this title] shall apply to items and services furnished on or after the date of the enactment of this Act [July 18, 1984]."

Section 2335(g) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 1395f, 1395x, 1395z, 1395cc, 1396a, and 1396d of this title] shall become effective on the date of the enactment of this Act [July 18, 1984]."

Section 2336(c)(1) of Pub. L. 98-369 provided that: "The amendments made by subsection (a) [amending sections 1395f and 1395n of this title] shall apply to certifications and plans of care made or established on or after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2354(b)(1) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

Amendment by section 2354(c)(1)(A) of Pub. L. 98-369 effective as if originally included in Pub. L. 96-499, see section 2354(e)(2) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by section 602 of Pub. L. 98-21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after Nov. 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98-21, set out as a note under section 1395ww of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 122(c)(1), (2), of Pub. L. 97-248 [amending this section] applicable to [illegible]ice care provided on or after Nov. 1, 1983, [illegible]ion 122(h)(1) of Pub. L. 97-248, as amended, set out as a note under section 1395c of this title.

PROVIDERS OF SERVICES TO CALCULATE AND REPORT LESSER-OF-COST-OR-CHARGES DETERMINATIONS SEPARATELY WITH RESPECT TO PAYMENTS UNDER PARTS A AND B OF THIS SUBCHAPTER; ISSUANCE OF REGULATIONS

Section 2308(a) of Pub. L. 98-369 provided that: "The Secretary of Health and Human Services shall issue regulations which require, for purposes of title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.], that providers of services calculate and report the lesser-of-cost-or-charges determinations separately with respect to payments for services under part A and services under part B of such title [42 U.S.C. 1395c et seq., 1395j et seq.] (other than clinical diagnostic laboratory tests paid under section 1833(h) [42 U.S.C. 1395l(h)]), and that payment under such title be based upon such separate determinations. Such regulations shall apply to cost reporting periods beginning on or after October 1, 1984."

DETERMINATION OF NOMINAL CHARGES FOR APPLYING NOMINALITY TEST

Section 2308(b)(1) of Pub. L. 98-369 provided that: "For purposes of applying the nominality test under sections 1814(b)(2) [42 U.S.C. 1395f(b)(2)] and 1833(a)(2)(B)(ii) [42 U.S.C. 1395l(a)(2)(B)(ii)] of the Social Security Act, the Secretary shall, in addition to those rules for establishing nominality which the Secretary determines to be appropriate, provide that charges representing 60 percent or less of costs shall be considered nominal. The charges used in making such determinations shall be the charges actually billed to charge-paying patients who are not entitled to benefits under either part of such title [42 U.S.C. 1395c et seq., 1395j et seq.]. Such determination shall be made separately with respect to payments for services under part A and services under part B of such title (other than clinical diagnostic laboratory tests paid under section 1833(h) [42 U.S.C. 1395l(h)]), or on the basis of inpatient and outpatient services, except that the determination need not be made separately for home health services if the Secretary finds that such separation is not appropriate."

REVISION OF REGULATIONS REGARDING ACCESS TO HOME HEALTH SERVICES

Section 2336(c)(2) of Pub. L. 98-369 provided that: "The Secretary shall provide, not later than 90 days after the date of the enactment of this Act [July 18, 1984], for such revision of regulations as may be required to reflect the amendments made by subsection (b) [amending sections 1395f and 1395n of this title]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 426, 1395d, 1395e, 1395g, 1395l, 1395n, 1395x, 1395y, 1395cc, 1395gg, 1395mm, 1395pp, 1395qq, 1395uu, 1395ww of this title.

§ 1395g. Payments to providers of services

[See main edition for text of (a) to (d)]

(e) Periodic interim payments

(1) The Secretary shall provide payment under this part for inpatient hospital services furnished by a subsection (d) hospital (as defined in section 1395ww(d)(1)(B) of this title, and including a distinct psychiatric or rehabilitation unit of such a hospital) and a subsection (d) Puerto Rico hospital (as defined in section 1395ww(d)(9)(A) of this title) on a periodic interim payment basis (rather than on the basis

of bills actually submitted) in the following cases:

(A) Upon the request of a hospital which is paid through an agency or organization with an agreement with the Secretary under section 1395h of this title, if the agency or organization, for three consecutive calendar months, fails to meet the requirements of subsection (c)(2) of such section and if the hospital meets the requirements (in effect as of October 1, 1986) applicable to payment on such a basis, until such time as the agency or organization meets such requirements for three consecutive calendar months.

(B) In the case of [1] hospital that—

(i) has a disproportionate share adjustment percentage (as established in clause (iv) of such section) of at least 5.1 percent (as computed for purposes of establishing the average standardized amounts for discharges occurring during fiscal year 1987), and

(ii) requests payment on such basis,

but only if the hospital was being paid for inpatient hospital services on such a periodic interim payment basis as of June 30, 1987, and continues to meet the requirements (in effect as of October 1, 1986) applicable to payment on such a basis.

(C) In the case of a hospital that—

(i) is located in a rural area,

(ii) has 100 or fewer beds, and

(iii) requests payment on such basis,

but only if the hospital was being paid for inpatient hospital services on such a periodic interim payment basis as of June 30, 1987, and continues to meet the requirements (in effect as of October 1, 1986) applicable to payment on such a basis.

(2) The Secretary shall provide (or continue to provide) for payment on a periodic interim payment basis (under the standards established under section 405.454(j) of title 42, Code of Federal Regulations, as in effect on October 1, 1986) with respect to—

(A) inpatient hospital services of a hospital that is not a subsection (d) hospital (as defined in section 1395ww(d)(1)(B) of this title);

(B) a hospital which is receiving payment under a State hospital reimbursement system under section 1395f(b)(3) or 1395ww(c) of this title, if payment on a periodic interim payment basis is an integral part of such reimbursement system;

(C) extended care services;

(D) home health services; and

(E) hospice care;

if the provider of such services elects to receive, and qualifies for, such payments.

(3) In the case of a subsection (d) hospital or a subsection (d) Puerto Rico hospital (as defined for purposes of section 1395ww of this title) which has significant cash flow problems resulting from operations of its intermediary or from unusual circumstances of the hospital's operation, the Secretary may make available appropriate accelerated payments.

[1] So in original. Probably should be followed by "a".

(As amended Oct. 21, 1986, Pub. L. 99-509, title IX, § 9311(a)(1), 100 Stat. 1996.)

AMENDMENTS

1986—Subsec. (e). Pub. L. 99-509 added subsec. (e).

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9311(a)(2) of Pub. L. 99-509 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to claims received on or after July 1, 1987."

TRANSITION

Section 9311(a)(3) of Pub. L. 99-509 provided that: "Upon the request of a hospital which—

"(A) as of June 30, 1987, is receiving payments under part A of title XVIII of such Act [this part] for inpatient hospital services on a periodic interim payment basis,

"(B) requests continuation of payment on such basis, and

"(C) is paid through an agency or organization with an agreement under section 1816 of such Act [42 U.S.C. 1395h],

the Secretary of Health and Human Services shall continue payment on such a basis until not earlier than the end of the first period of three consecutive calendar months (beginning no earlier than April 1987) during all of which the agency or organization has met the requirements of section 1816(c)(2) of such Act (relating to prompt payment of claims)."

§ 1395h. Use of public or private agencies or organizations to facilitate payment to providers of services

(a) Authorization for agreement by Secretary for implementation; scope of agreement

If any group or association of providers of services wishes to have payments under this part to such providers made through a national, State, or other public or private agency or organization and nominates such agency or organization for this purpose, the Secretary is authorized to enter into an agreement with such agency or organization providing for the determination by such agency or organization (subject to the provisions of section 1395oo of this title and to such review by the Secretary as may be provided for by the agreement) of the amount of the payments required pursuant to this part to be made to such providers (and to providers assigned to such agency or organization under subsection (e) of this section), and for the making of such payments by such agency or organization to such providers (and to providers assigned to such agency or organization under subsection (e) of this section). Such agreement may also include provision for the agency or organization to do all or any part of the following: (1) to provide consultative services to institutions or agencies to enable them to establish and maintain fiscal records necessary for purposes of this part and otherwise to qualify as hospitals, extended care facilities, or home health agencies, and (2) with respect to the providers of services which are to receive payments through it (A) to serve as a center for, and communicate to providers, any information or instructions furnished to it by the Secretary, and serve as a channel of communication from providers to the Secretary; (B) to make such audits of the records of providers

as may be necessary to insure that proper payments are made under this part; and (C) to perform such other functions as are necessary to carry out this subsection. As used in this subchapter and part B of subchapter XI of this chapter, the term "fiscal intermediary" means an agency or organization with a contract under this section.

[*See main edition for text of (b)*]

(c) Terms and conditions of agreements; prompt payment of claims

(1) An agreement with any agency or organization under this section may contain such terms and conditions as the Secretary finds necessary or appropriate, may provide for advances of funds to the agency or organization for the making of payments by it under subsection (a) of this section, and shall provide for payment of so much of the cost of administration of the agency or organization as is determined by the Secretary to be necessary and proper for carrying out the functions covered by the agreement. The Secretary shall provide that in determining the necessary and proper cost of administration, the Secretary shall, with respect to each agreement, take into account the amount that is reasonable and adequate to meet the costs which must be incurred by an efficiently and economically operated agency or organization in carrying out the terms of its agreement.

(2)(A) Each agreement under this section shall provide that payment shall be issued, mailed, or otherwise transmitted with respect to not less than 95 percent of all claims submitted under this subchapter—

(i) which are clean claims, and

(ii) for which payment is not made on a periodic interim payment basis,

within the applicable number of calendar days after the date on which the claim is received.

(B) In this paragraph:

(i) The term "clean claim" means a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this subchapter.

(ii) The term "applicable number of calendar days" means—

(I) with respect to claims received in the 12-month period beginning October 1, 1986, 30 calendar days,

(II) with respect to claims received in the 12-month period beginning October 1, 1987, 26 calendar days,

(III) with respect to claims received in the 12-month period beginning October 1, 1988, 25 calendar days, and

(IV) with respect to claims received in the 12-month period beginning October 1, 1989, and claims received in any succeeding 12-month period, 24 calendar days.

(C) If payment is not issued, mailed, or otherwise transmitted within the applicable number of calendar days (as defined in clause (ii) of subparagraph (B)) after a clean claim (as defined in clause (i) of such subparagraph) is received from a hospital, skilled nursing facility, home health agency, or hospice program that is not receiving payments on a periodic interim payment basis with respect to such services, interest shall be paid at the rate used for purposes of section 3902(a) of title 31 (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made.

[*See main edition for text of (d)*]

(e) Assignment or reassignment of provider of services; designation of agency or organization to perform provider services and home health agency functions

[*See main edition for text of (1) to (3)*]

(4) Notwithstanding subsections (a) and (d) of this section and paragraphs (1), (2), and (3) of this subsection, the Secretary shall designate regional agencies or organizations which have entered into an agreement with him under this section to perform functions under such agreement with respect to home health agencies (as defined in section 1395x(o) of this title) in the region, except that in assigning such agencies to such designated regional agencies or organizations the Secretary shall assign a home health agency which is a subdivision of a hospital (and such agency and hospital are affiliated or under common control) only if, after applying such criteria relating to administrative efficiency and effectiveness as he shall promulgate, he determines that such assignment would result in the more effective and efficient administration of this subchapter. By not later than July 1, 1987, the Secretary shall limit the number of such regional agencies or organizations to not more than ten.

[*See main edition for text of (5)*]

(f) Development of standards, criteria, and procedures by Secretary for evaluation of agency or organization performance

In order to determine whether the Secretary should enter into, renew, or terminate an agreement under this section with an agency or organization, whether the Secretary should assign or reassign a provider of services to an agency or organization, and whether the Secretary should designate an agency or organization to perform services with respect to a class of providers of services, the Secretary shall develop standards, criteria, and procedures to evaluate such agency's or organization's (1) overall performance of claims processing and other related functions required to be performed by such an agency or organization under an agreement entered into under this section, and (2) performance of such functions with respect to specific providers of services, and the Secretary shall establish standards and criteria with respect to the efficient and effective administration of this part. No agency or organization shall be found under such standards and criteria not to be efficient or effective or to be less efficient or effective solely on the ground that

the agency or organization serves only providers located in a single State. Such standards and criteria shall be published in the Federal Register, and opportunity shall be provided for public comment prior to implementation.

[*See main edition for text of (g) to (i)*]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2326(b), (c)(1), (d)(1), 98 Stat. 1087; Oct. 21, 1986, Pub. L. 99-509, title IX, §§ 9311(b), 9352(a)(2), 100 Stat. 1997, 2044.)

REFERENCES IN TEXT

Part B of subchapter XI of this chapter, referred to in subsec. (a), is classified to section 1320c et seq. of this title.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-509, § 9352(a)(2), inserted at end "As used in this subchapter and part B of subchapter XI of this chapter, the term 'fiscal intermediary' means an agency or organization with a contract under this section."

Subsec. (c). Pub. L. 99-509, § 9311(b), designated existing provisions as par. (1) and added par. (2).

1984—Subsec. (c). Pub. L. 98-369, § 2326(d)(1), inserted provision that the Secretary, in determining the necessary and proper cost of administration with respect to each agreement, take into account the amount that is reasonable and adequate to meet the costs which must be incurred by an efficiently and economically operated agency or organization in carrying out the terms of its agreement.

Subsec. (e)(4). Pub. L. 98-369, § 2328(b), inserted provision that not later than July 1, 1987, the Secretary limit the number of regional agencies or organizations to not more than ten.

Subsec. (f). Pub. L. 98-369, § 2326(c)(1), struck out in cl. (2) ", by regulation," after "Secretary shall establish" and inserted provision that the standards and criteria be published in the Federal Register and an opportunity be provided for public comment prior to implementation.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9311(d) of Pub. L. 99-509 provided that:

"(1) Except as provided in paragraph (2), the amendments made by subsections (b) and (c) [amending sections 1395h and 1395u of this title] shall apply to claims received on or after November 1, 1986.

"(2) Sections 1816(c)(2)(C)) [sic] and 1842(c)(2)(C) of the Social Security Act [sections 1395h(c)(2)(C) and 1395u(c)(2)(C) of this title], as added by such amendments, shall apply to claims received on or after April 1, 1987.

"(3) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 of the Social Security Act and contracts under section 1842 of such Act, and regulations, to such extent as may be necessary to implement the provisions of this Act on a timely basis."

Amendment by section 9352(a)(2) of Pub. L. 99-509 to be implemented by Secretary of Health and Human Services not later than 6 months after Oct. 21, 1986, see section 9352(c)(1) of Pub. L. 99-509, set out as a note under section 1320c-2 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2326(d)(3) of Pub. L. 98-369 provided that: "The amendments made by this subsection [amending sections 1395h and 1395u of this title] shall apply to agreements and contracts entered into or renewed after September 30, 1984."

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97-248, as amended, set out as a note under section 1395c of this title.

REPLACEMENT OF AGENCY, ORGANIZATION, OR CARRIER PROCESSING MEDICARE CLAIMS; NUMBER OF AGREEMENTS AND CONTRACTS AUTHORIZED FOR FISCAL YEARS 1985 AND 1986

Section 2326(a) of Pub. L. 98-369, as amended by Pub. L. 98-617, § 3(a)(2), Nov. 8, 1984, 98 Stat. 3295; Pub. L. 99-509, title IX, § 9321(b), Oct. 21, 1986, 100 Stat. 2016, provided that: "During each fiscal year (beginning with fiscal year 1985 and ending with fiscal year 1989), the Secretary of Health and Human Services may enter into not more than two agreements under section 1816 of the Social Security Act [42 U.S.C. 1395h], and not more than two contracts under section 1842 of such Act [42 U.S.C. 1395u], on the basis of competitive bidding, without regard to the nominating process under section 1816(a) of such Act or cost reimbursement provisions under sections 1816(c) or 1842(c) of such Act during the term of the agreement. Such procedure may be used only for the purpose of replacing an agency or organization or carrier which over a period of time has been in the lowest 20th percentile of agencies and organizations or carriers having agreements or contracts under the respective section, as measured by the Secretary's cost and performance criteria. Any agency or organization or carrier selected on the basis of competitive bidding must perform all of the duties listed in section 1816(a) of such Act, or the duties listed in paragraphs (1) through (4) of section 1842(a) of such Act, as the case may be, and must be a health insuring organization (as determined by the Secretary)."

AUDIT AND MEDICAL CLAIMS REVIEW

Section 118 of Pub. L. 97-248, as amended by Pub. L. 99-272, title IX, § 9216(a), Apr. 7, 1986, 100 Stat. 180, provided that: "In addition to any funds otherwise provided for payments to intermediaries and carriers under agreements entered into under sections 1816 and 1842 of the Social Security Act [sections 1395h and 1395u of this title], there are transferred from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Fund in such proportions as the Secretary of Health and Human Services determines to be appropriate, an additional $45,000,000 for each of fiscal years 1983, 1984, and 1985, and $105,000,000 for each of fiscal years 1986, 1987, and 1988 for payments to such intermediaries and carriers under such agreements to be used exclusively for purposes of carrying out provider cost audits, of reviewing medical necessity, and of recovering third-party liability payments, consistent with the provisions of sections 1816 and 1842 of the Social Security Act."

[Section 9216(b) of Pub. L. 99-272 provided that: "The amendments made by subsection (a) [amending this note] shall apply to fiscal years beginning with fiscal year 1986."]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320a-3, 1320c-2, 1320c-3, 1395g, 1395u, 1395mm, 1395oo, 1395pp of this title.

§ 1395i. Federal Hospital Insurance Trust Fund

(a) Creation; deposits; transfers from Treasury

There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Hospital Insurance Trust Fund" (hereinafter in this section referred to as the "Trust Fund"). The Trust Fund shall consist of such gifts and bequests as may be made as provided in section 401(i)(1) of this title, and such amounts as may be deposited in,

or appropriated to, such fund as provided in this part. There are hereby appropriated to the Trust Fund for the fiscal year ending June 30, 1966, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1) the taxes imposed by sections 3101(b) and 3111(b) of the Internal Revenue Code of 1986 with respect to wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of such Code after December 31, 1965, as determined by the Secretary of the Treasury by applying the applicable rates of tax under such sections to such wages, which wages shall be certified by the Secretary of Health and Human Services on the basis of records of wages established and maintained by the Secretary of Health and Human Services in accordance with such reports; and

(2) the taxes imposed by section 1401(b) of the Internal Revenue Code of 1986 with respect to self-employment income reported to the Secretary of the Treasury or his delegate on tax returns under subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such section to such self-employment income, which self-employment income shall be certified by the Secretary of Health and Human Services on the basis of records of self-employment established and maintained by the Secretary of Health and Human Services in accordance with such returns.

The amounts appropriated by the preceding sentence shall be transferred from time to time from the general fund in the Treasury to the Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in the preceding sentence, paid to or deposited into the Treasury; and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the taxes specified in such sentence.

(b) Board of Trustees; composition; meetings; duties

With respect to the Trust Fund, there is hereby created a body to be known as the Board of Trustees of the Trust Fund (hereinafter in this section referred to as the "Board of Trustees") composed of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this section referred to as the "Managing Trustee"). The Administrator of the Health Care Financing Administration shall serve as the Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

[*See main edition for text of (1) to (4)*]

The report provided for in paragraph (2) shall include a statement of the assets of, and the disbursements made from, the Trust Fund during the preceding fiscal year, an estimate of the expected income to, and disbursements to be made from, the Trust Fund during the current fiscal year and each of the next 2 fiscal years, and a statement of the actuarial status of the Trust Fund. Such report shall also include an actuarial opinion by the Chief Actuarial Officer of the Health Care Financing Administration certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable. Such report shall be printed as a House document of the session of the Congress to which the report is made. A person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Fund.

(c) Investment of Trust Fund by Managing Trustee

It shall be the duty of the Managing Trustee to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Fund. Such obligations issued for purchase by the Trust Fund shall have maturities fixed with due regard for the needs of the Trust Fund and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

[*See main edition for text of (d) and (e)*]

(f) Payment of estimated taxes

(1) The Managing Trustee is directed to pay from time to time from the Trust Fund into the Treasury the amount estimated by him as taxes imposed under section 3101(b) which are sub-

ject to refund under section 6413(c) of the Internal Revenue Code of 1986 with respect to wages paid after December 31, 1965. Such taxes shall be determined on the basis of the records of wages established and maintained by the Secretary of Health and Human Services in accordance with the wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1986, and the Secretary of Health and Human Services shall furnish the Managing Trustee such information as may be required by the Managing Trustee for such purpose. The payments by the Managing Trustee shall be covered into the Treasury as repayments to the account for refunding internal revenue collections.

[See main edition for text of (2)]

(g) Transfers from other Funds

There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Federal Old-Age and Survivors Insurance Trust Fund and from the Federal Disability Insurance Trust Fund amounts equivalent to the amounts not previously so transferred which the Secretary of Health and Human Services shall have certified as overpayments (other than amounts so certified to the Railroad Retirement Board) pursuant to section 1395gg(b) of this title. There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Railroad Retirement Account amounts equivalent to the amounts not previously so transferred which the Secretary of Health and Human Services shall have certified as overpayments to the Railroad Retirement Board pursuant to section 1395gg(b) of this title.

(h) Payments from Trust Fund amounts certified by Secretary

The Managing Trustee shall also pay from time to time from the Trust Fund such amounts as the Secretary of Health and Human Services certifies are necessary to make the payments provided for by this part, and the payments with respect to administrative expenses in accordance with section 401(g)(1) of this title.

[See main edition for text of (i)]

(j) Loans from other Funds; interest; repayment; report to Congress

(1) If at any time prior to January 1988 the Managing Trustee determines that borrowing authorized under this subsection is appropriate in order to best meet the need for financing the benefit payments from the Federal Hospital Insurance Trust Fund, the Managing Trustee may, subject to paragraph (5), borrow such amounts as he determines to be appropriate from either the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund for transfer to and deposit in the Federal Hospital Insurance Trust Fund.

(2) In any case where a loan has been made to the Federal Hospital Insurance Trust Fund under paragraph (1), there shall be transferred on the last day of each month after such loan is made, from such Trust Fund to the lending Trust Fund, the total interest accrued to such day with respect to the unrepaid balance of such loan at a rate equal to the rate which the lending Trust Fund would earn on the amount involved if the loan were an investment under subsection (c) of this section (even if such an investment would earn interest at a rate different than the rate earned by investments redeemed by the lending fund in order to make the loan).

(3)(A) If in any month after a loan has been made to the Federal Hospital Insurance Trust Fund under paragraph (1), the Managing Trustee determines that the assets of such Trust Fund are sufficient to permit repayment of all or part of any loans made to such Fund under paragraph (1), he shall make such repayments as he determines to be appropriate.

(B)(i) If on the last day of any year after a loan has been made under paragraph (1) by the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund to the Federal Hospital Insurance Trust Fund, the Managing Trustee determines that the Hospital Insurance Trust Fund ratio exceeds 15 percent, he shall transfer from such Trust Fund to the lending trust fund an amount that—

(I) together with any amounts transferred to another lending trust fund under this paragraph for such year, will reduce the Hospital Insurance Trust Fund ratio to 15 percent; and

(II) does not exceed the outstanding balance of such loan.

(ii) Amounts required to be transferred under clause (i) shall be transferred on the last day of the first month of the year succeeding the year in which the determination described in clause (i) is made.

(iii) For purposes of this subparagraph, the term "Hospital Insurance Trust Fund ratio" means, with respect to any calendar year, the ratio of—

(I) the balance in the Federal Hospital Insurance Trust Fund, as of the last day of such calendar year; to

(II) the amount estimated by the Secretary to be the total amount to be paid from the Federal Hospital Insurance Trust Fund during the calendar year following such calendar year (other than payments of interest on, and repayments of, loans from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund under paragraph (1)), and reducing the amount of any transfer to the Railroad Retirement Account by the amount of any transfers into such Trust Fund from the Railroad Retirement Account.

(C)(i) The full amount of all loans made under paragraph (1) (whether made before or after January 1, 1983) shall be repaid at the earliest feasible date and in any event no later than December 31, 1989.

(ii) For the period after December 31, 1987 and before January 1, 1990, the Managing

Trustee shall transfer each month from the Federal Hospital Insurance Trust Fund to any Trust Fund that is owed any amount by the Federal Hospital Insurance Trust Fund on a loan made under paragraph (1), an amount not less than an amount equal to (I) the amount owed to such Trust Fund by the Federal Hospital Insurance Trust Fund at the beginning of such month (plus the interest accrued on the outstanding balance of such loan during such month), divided by (II) the number of months elapsing after the preceding month and before January 1990. The Managing Trustee may, during this period, transfer larger amounts than prescribed by the preceding sentence.

[*See main edition for text of (4)*]

(5)(A) No amounts may be loaned by the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund under paragraph (1) during any month if the OASDI trust fund ratio for such month is less than 10 percent.

(B) For purposes of this paragraph, the term "OASDI trust fund ratio" means, with respect to any month, the ratio of—

(i) the combined balance in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, reduced by the outstanding amount of any loan (including interest thereon) theretofore made to either such Trust Fund from the Federal Hospital Insurance Trust Fund under section 401(*l*) of this title, as of the last day of the second month preceding such month, to

(ii) the amount obtained by multiplying by twelve the tetal amount which (as estimated by the Secretary) will be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund during the month for which such ratio is to be determined for all purposes authorized by section 401 of this title (other than payments of interest on, or repayments of, loans from the Federal Hospital Insurance Trust Fund under section 401(*l*) of this title), but excluding any transfer payments between such trust funds and reducing the amount of any transfers to the Railroad Retirement Account by the amount of any transfers into either such trust fund from that Account.

(Aug. 14, 1935, ch. 531, title XVIII, § 1817, as added July 30, 1965, Pub. L. 89-97, title I, § 102(a), 79 Stat. 299, and amended Jan. 2, 1968, Pub. L. 90-248, title I, § 169(a), 81 Stat. 875; Oct. 30, 1972, Pub. L. 92-603, title I, § 132(d), 86 Stat. 1361; June 13, 1978, Pub. L. 95-292, § 5, 92 Stat. 315; June 9, 1980, Pub. L. 96-265, title III, § 310(c), 94 Stat. 460; Dec. 29, 1981, Pub. L. 97-123, § 1(b), 95 Stat. 1659; Apr. 20, 1983, Pub. L. 98-21, title I, §§ 141(b), 142(b)(1), (2)(A), (3), (4), 154(b), title III, § 341(b), 97 Stat. 98, 100, 101, 107, 135; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2337(a), 2354(b)(2), title VI, § 2663(j)(2)(F)(i), 98 Stat. 1091, 1100, 1170; Apr. 7, 1986, Pub. L. 99-272, title IX, § 9213(b), 100 Stat. 180; Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (a)(1), (2) and (f)(1), is classified generally to Title 26, Internal Revenue Code. Subtitle F of such Code appears at section 6001 et seq. of Title 26.

AMENDMENTS

1986—Subsec. (a)(1), (2). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (b). Pub. L. 99-272 struck out provision at end of penultinate sentence that certification shall not refer to economic assumptions underlying Trustee's report.

Subsec. (f)(1). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" wherever appearing.

1984—Subsec. (a). Pub. L. 98-369, § 2337(a), in provisions following par. (2) substituted "from time to time" for "monthly on the first day of each calendar month", "paid to or deposited into the Treasury" for "to be paid to or deposited into the Treasury during such month", and struck out provision that all amounts transferred to the Trust Fund under the preceding sentence had to be invested by the Managing Trustee in the same manner and to the same extent as the other assets of the Trust Fund, and the Trust Fund had to pay interest to the general fund on the amount so transferred on the first day of any month at a rate (calculated on a daily basis, and applied against the difference between the amount so transferred on such first day and the amount which would have been transferred to the Trust Fund up to that day under the procedures in effect on January 1, 1983) equal to the rate earned by the investments of the Trust Fund in the same month under subsec. (c).

Subsec. (a)(1), (2). Pub. L. 98-369, § 2663(j)(2)(F)(i), substituted "Health and Human Services" for "Health, Education, and Welfare" wherever appearing.

Subsec. (c). Pub. L. 98-369, § 2354(b)(2), substituted "under chapter 31 of title 31" for "under the Second Liberty Bond Act, as amended".

Subsecs. (f)(1), (g), (h). Pub. L. 98-369, § 2663(j)(2)(F)(i), substituted "Health and Human Services" for "Health, Education, and Welfare" wherever appearing.

1983—Subsec. (a). Pub. L. 98-21, § 141(b)(1)(A), in provisions following par. (2) substituted "monthly on the first day of each calendar month" for "from time to time", substituted "to be paid to or deposited into the Treasury during such month" for "paid to or deposited into the Treasury", and inserted provision that all amounts transferred to the Trust Fund under existing provisions shall be invested by the Managing Trustee in the same manner and to the same extent as the other assets of the Trust Fund; and the Trust Pund shall pay interest to the general fund on the amount so transferred on the first day of any month at a rate (calculated on a daily basis, and applied against the difference between the amount so transferred on such first day and the amount which would have been transferred to the Trust Fund up to that day under the procedures in effect on Jan. 1, 1983) equal to the rate earned by the investments of the Trust Fund in the same month under subsection (c).

Subsec. (b). Pub. L. 98-21, § 341(b)(1), substituted in provisions preceding par. (1) "Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate" for "Secretary of Health, Education, and Welfare, all ex officio".

Pub. L. 98-21, § 154(b), inserted at end provision that the report referred to in par. (2) shall also include an actuarial opinion by the Chief Actuarial Officer of the Health Care Financing Administration certifying that

the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable and provided further that the certification shall not refer to economic assumptions underlying the Trustee's report.

Pub. L. 98-21, § 341(b)(2), inserted at end provision that a person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Fund.

Subsec. (j)(1). Pub. L. 98-21, § 142(b)(1), substituted reference to January 1988 for reference to January 1983 and inserted ", subject to paragraph (5)," after "may".

Subsec. (j)(2). Pub. L. 98-21, § 142(b)(2)(A), substituted "on the last day of each month after such loan is made" for "from time to time", substitutod "the total interest accrued to such day" for "interest", and inserted "(even if such an investment would earn interest at a rate different than the rate earned by investments redeemed by the lending fund in order to make the loan)".

Subsec. (j)(3)(A). Pub. L. 98-21, § 142(b)(3), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (j)(5). Pub. L. 98-21, § 142(b)(4), added par. (5).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2337(b) of Pub. L. 98-369 provided that: "The amendments made by subsection (a) [amending this section] shall become effective on the first day of the montb following the month in which this Act is enacted [July 1984]."

Amendment by section 2354(b)(2) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liabiity, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 141(b) of Pub. L. 98-21 effective on the first day of the month following April 1983, see section 141(c) of Pub. L. 98-21, set out as a note under section 401 of this title.

Section 142(b)(2)(B) of Pub. L. 98-21 provided that: "The amendment made by this paragraph [amending subsec. (j)(2) of this section] shall apply with respect to months beginning more than 30 days after the date of enactment of this Act [Apr. 20, 1983]."

Amendment by section 154(b) of Pub. L. 98-21 effective Apr. 20, 1983, see section 154(e) of Pub. L. 98-21, set out as a note under section 401 of this title.

Amendment by section 341(b) of Pub. L. 98-21 effective Apr. 20, 1983, see section 341(d) of Pub. L. 98-21, set out as a note under section 401 of this title.

DUE DATE FOR 1983 REPORT ON OPERATION AND STATUS OF TRUST FUND

Notwithstanding subsec. (b)(2) of this section, the annual report of the Board of Trustees of the Trust Fund required for calendar year 1983 under this section may be filed at any time not later than forty-five days after Apr. 20, 1983, see section 154(d) of Pub. L. 98-21, set out as a noto under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sectious 401, 417, 426a, 429, 910, 1320a-7a, 1395b-1, 1395i-1, 1395gg, 1395vv, 1396m of this title.

§ 1395i-2. Hospital insurance benefits for uninsured individuals not otherwise eligible

[See main edition for text of (a) and (b)]

(c) Period of enrollment; scope of coverage

The provisions of section 1395p of this title (except subsection (f) thereof), section 1395q of this title, subsection (b) of section 1395r of this title, and subsections (f) and (h) of section 1395s of this title shall apply to persons authorized to enroll under this section except that—

(1) individuals who meet the conditions of subsection (a)(1), (3), and (4) of this section on or before the last day of the seventh month after October 1972 may enroll under this part and (if not already so enrolled) may also enroll under part B of this subchapter during an initial general enrollment period which shall begin on the first day of the second month which begins after October 30, 1972, and shall end on the last day of the tenth month after October 1972;

[See main edition for text of (2) to (4)]

(5) an individual's entitlement under this section shall terminate with the month before the first month in which he becomes eligible for hospital insurance benefits under section 426 of this title or section 426a of this title; and upon such termination, such individual shall be deemed, solely for purposes of hospital insurance entitlement, to have filed in such first month the application required to establish such entitlement;

(6) termination of coverage for supplementary medical insurance shall result in simultaneous termination of hospital insurance benefits for uninsured individuals who are not otherwise entitled to benefits under this chapter; and

(7) any percent increase effected under section 1395r(b) of this title in an individual's monthly premium may not exceed 10 percent and shall only apply to premiums paid during a period equal to twice the number of months in the full 12-month periods described in that section.

(d) Monthly premiums

(1) The monthly premium of each individual for each month in his coverage period before July 1974 shall be $33.

(2) The Secretary shall, during the next to last calendar quarter of each year[2] determine and promulgate the dollar amount (whether or not such dollar amount was applicable for premiums for any prior month) which shall be applicable for premiums for months occurring in the following calendar year. Such amount shall be equal to $33, multiplied by the ratio of (A) the inpatient hospital deductible for that following calendar year, as promnlgated under section 1395e(b)(2) of this title, to (B) such deductible promulgated for 1973. Any amount determined under the preceding sentence which is not a multiple of $1 shall be rounded to the nearest multiple of $1, or, if a multiple of 50

[2] So in original. Probably should be followed by a comma.

cents but not a multiple of $1, to the next higher multiple of $1.

[*See main edition for text of (e) and (f)*]

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, § 606(a)(3)(D), (b), 97 Stat. 170, 171; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2315(e), 2354(b)(3), (4), 98 Stat. 1080, 1100; Apr. 7, 1986, Pub. L. 99-272, title IX, § 9124(a), 100 Stat. 168.)

AMENDMENTS

1986—Subsec. (c)(7). Pub. L. 99-272 added par. (7).

1984—Subsec. (c). Pub. L. 98-369, § 2315(e), substituted "subsection (b) of section 1395r of this title" for "subsection (a) of section 1395r of this title".

Subsec. (c)(1). Pub. L. 98-369, § 2354(b)(3), substituted "October 1972" for "the month in which this Act is enacted".

Subsec. (d)(2). Pub. L. 98-369, § 2354(b)(4), substituted ", if a multiple of 50 cents but not a multiple of $1," for "if midway between multiples of $1".

1983—Subsec. (c). Pub. L. 98-21, § 606(a)(3)(D), substituted "subsection (a) of section 1395r" for "subsection (c) of section 1395r".

Subsec. (d)(2). Pub. L. 98-21, § 606(b), substituted "during the next to last calendar quarter of each year" for "during the last calendar quarter of each year, beginning in 1973,", "the following calendar year" for "the 12-month period commencing July 1 of the next year", and "for that following calendar year" for "for such next year".

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9124(b) of Pub. L. 99-272 provided that:

"(1) The amendment made by subsection (a)(3) [amending this section] shall apply to premiums paid for months beginning with July 1986.

"(2) In applying that amendment, months (before, during, or after April 1986) in which an individual was required to pay a premium increased under the section that was so amended shall be taken into account in determining the month in which the premium will no longer be subject to an increase under that section as so amended."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2315(e) of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2315(g) of Pub. L. 98-369, set out as an Effective and Termination Dates of 1984 Amendments note under section 1395ww of this title.

Amendment by section 2354(b)(3), (4), of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT; TRANSITIONAL RULE

Amendment by Pub. L. 98-21 applicable to premiums for months beginning with January 1984, but for months after June 1983 and before January 1984, the monthly premium for June 1983 shall apply to individuals enrolled under parts A and B of this subchapter, see section 606(c) of Pub. L. 98-21, set out as a note under section 1395r of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395p, 1395ff, 1395gg, 1396d of this title; title 25 section 1622.

PART B—SUPPLEMENTARY MEDICAL INSURANCE BENEFITS FOR THE AGED AND DISABLED

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 254n, 426-1, 1320a-3, 1320a-7a, 1320c-13, 1395b-1, 1395l-2, 1395x, 1395y, 1395cc, 1395ff, 1395ll, 1395mm, 1395pp, 1395rr, 1395ss, 1395uu, 1395xx, 1396a, 1396b, 1396d, 1396n of this title; title 2 section 906; title 26 section 213; title 31 section 3806.

§ 1395j. Establishment of supplementary medical insurance program for the aged and disabled

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 section 629.

§ 1395k. Scope of benefits; definitions

(a) The benefits provided to an individual by the insurance program established by this part shall consist of—

[*See main edition for text of (1)*]

(2) entitlement to have payment made on his behalf (subject to the provisions of this part) for—

(A) home health services;

(B) medical and other health services furnished by a provider of services or by others under arrangement with them made by a provider of services, excluding—

(i) physician services except where furnished by—

(I) a resident or intern of a hospital, or

(II) a physician to a patient in a hospital which has a teaching program approved as specified in paragraph (6) of section 1395x(b) of this title (including services in conjunction with the teaching programs of such hospital whether or not such patient is an inpatient of such hospital) where the conditions specified in paragraph (7) of such section are met,

(ii) services for which payment may be made pursuant to section 1395n(b)(2) of this title, and

(iii) services of a certified registered nurse anesthetist; and

(C) outpatient physical therapy services (other than services to which the second sentence of section 1395x(p) of this title applies) and outpatient occupational therapy services (other than services to which such sentence applies through the operation of section 1395x(g) of this title);

[*See main edition for text of (D) and (E)*]

(F) facility services furnished in connection with surgical procedures specified by the Secretary—

(i) pursuant to section 1395l(i)(1)(A) of this title and performed in an ambulatory surgical center (which meets health, safety, and other standards specified by the Secretary in regulations) if the center has an agreement in effect with the Secretary by which the center agrees to

aceept the standard overhead amount determined under section 1395l(i)(2)(A) of this title as full payment for such services and to accept an assignment described in section 1395u(b)(3)(B)(ii) of this title with respect to payment for all such services furnished by the center to individuals enrolled under this part, or

(ii) pursuant to section 1395l(i)(1)(B) of this title and performed by a physician, described in paragraph (1), (2), or (3) of section 1395x(r) of this title, in his office, if the Secretary has determined that—

[*See main edition for text of (I)*]

(II) the particular physician involved has agrced to make available to such organization such records as the Secretary determines to be necessary to carry out the review, and

(III) the physician is authorized to perform the procedure in a hospital located in the area in which the office is located,

and if the physician agrees to accept the standard overhead amount determined under section 1395l(i)(2)(B) of this title as full payment for such services and to accept an assignment described in section 1395u(b)(3)(B)(ii) of this title with respect to payment for all services (including all pre- and post-operative services) described in paragraphs (1) and (2)(A) of section 1395x(s) of this title and furnished in connection with such surgical procedure to individuals enrolled under this part.

[*See main edition for text of (b)*]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2341(b), 2354(b)(6), 98 Stat. 1094, 1100; Oct. 21, 1986, Fub. L. 99-509, title IX, §§ 9320(d), 9337(a), 9343(e)(1), 100 Stat. 2013, 2033, 2041.)

AMENDMENTS

1986—Subsec. (a)(2)(B)(iii). Pub. L. 99-509, § 9320(d), added cl. (iii).

Subsec. (a)(2)(C). Pub. L. 99-509, § 9337(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "outpatient physical therapy services, other than services to which the next to last sentence of section 1395x(p) of this title applies;".

Subscc. (a)(2)(F). Pub. L. 99-509, § 9343(e)(1), inserted "standard overhead" in cl. (i) and concluding provisions of cl. (ii).

1984—Subsec. (a)(2)(F)(ii). Pub. L. 98-369, § 2341(b), substituted "paragraph (1), (2), or (3) of section 1395x(r) of this title" for "section 1395x(r)(1) of this title".

Subsec. (a)(2)(F)(ii)(II). Pub. L. 98-369, § 2354(b)(6), substituted "organization" for "Organization".

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9320(i) of Pub. L. 99-509 provided that: "The amendments made by this section (other than subsection (a)) [amending sections 1395k, 1395l, 1395u, 1395x, 1395y, 1395aa, 1395bb, 1395cc, 1395ww, 1396a, and 1396n of this title] shall apply to services furnished on or after January 1, 1989."

Section 9337(e) of Pub. L. 99-509 provided that: "The amendments made by this section [amending sections 1395k, 1395l, 1395n, 1395x, and 1395cc of this title] shall apply to expenses incurred for outpatient occupational therapy services furnished on or after July 1, 1987."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2341(d) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 1395k and 1395x of this title] apply to services furnished on or after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2354(b)(6) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

CONSTRUCTION OF SECTION 9320 OF PUB. L. 99-509

Section 9320(j) of Pub. L. 99-509 provided that: "Nothing in this section or the amendments made by this section [amending sections 1395k, 1395l, 1395u, 1395x, 1395y, 1395aa, 1395bb, 1395cc, 1395ww, 1396a, and 1396n of this title, enacting provisions set out as a note above, and amending provisions set out as a note under section 1395ww of this title] shall contravene provisions of State law relating to the practice of medicine or nursing or State law requirements or institutional requirements regarding the administration of anesthesia and its medical direction or supervision."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395l, 1395n, 1395x, 1395z, 1395aa, 1395bb, 1395gg of this title.

§ 1395l. Payment of benefits

(a) Amounts

Except as provided in section 1395mm of this title, and subject to the succeeding provisions of this section, there shall be paid from the Federal Supplementary Medical Insurance Trust Fund, in the case of each individual who is covered under the insurance program established by this part and incurs expenses for services with respect to which benefits are payable under this part, amounts equal to—

(1) in the case of services described in section 1395k(a)(1) of this title—80 percent of the reasonable charges for the services; except that (A) an organization which provides medical and other health serviees (or arranges for their availability) on a prepayment basis may elect to be paid 80 percent of the reasonable cost of services for which payment may be madc under this part on behalf of individuals enrolled in such organization in lieu of 80 percent of the reasonable charges for such services if the organization undertakes to charge such individuals no more than 20 percent of such reasonable cost plus any amounts payable by them as a result of subsection (b) of this seetion, (B) with respect to items and services described in section 1395x(s)(10)(A) of this title, the amounts paid shall be 100 percent of the reasonable charges for sueh items and services, (C) with respect to expenses incurred for those physicians' services for which payment may be made under this part that are described in section 1395y(a)(4) of this title, the amounts paid shall be subject to such limitations as may be prescribed by regulations, (D) with respect to clinical diagnostic laboratory tests for which

payment is made under this part (i) on the basis of a fee schedule under subsection (h)(1) of this section, the amount paid shall be equal to 80 percent (or 100 percent, in the case of such tests for which payment is made on the basis of an assignment described in section 1395u(b)(3)(B)(ii) of this title, under the procedure described in section 1395gg(f)(1) of this title, or for tests furnished in connection with obtaining a second opinion required under section 1320c-13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion)) of the lesser of the amount determined under such fee schedule, the limitation amount for that test determined under subsection (h)(4)(B) of this section, or the amount of the charges billed for the tests, or (ii) on the basis of a negotiated rate established under subsection (h)(6) of this section, the amount paid shall be equal to 100 percent of such negotiated rate, (E) with respect to services furnished to individuals who have been determined to have end stage renal disease, the amounts paid shall be determined subject to the provisions of section 1395rr of this title, (F) with respect to expenses incurred for services described in subsection (i)(3) of this section under the conditions specified in such subsection, the amounts paid shall be the reasonable charge for such services, and (G) with respect to items and services (other than clinical diagnostic laboratory tests) furnished in connection with obtaining a second opinion required under section 1320c-13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion), the amounts paid shall be 100 percent of the reasonable charges for such items and services; and [1] (H) with respect to services of a certified registered nurse anesthetist under section 1395x(s)(11) of this title, the amounts paid shall be 80 percent of the lesser of the actual charge or the fee schedule for such services established by the Secretary in accordance with subsection (*l*) of this section,[2]

(2) in the case of services described in section 1395k(a)(2) of this title (except those services described in subparagraphs (D), (E), and (F) of such section and unless otherwise specified in section 1395rr of this title)—

(A) with respect to home health services (other than durable medical equipment), to items and services (other than clinical diagnostic laboratory tests) furnished in connection with obtaining a second opinion required under section 1320c-13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion), and to items and services described in section 1395x(s)(10)(A) of this title, the lesser of—

(i) the reasonable cost of such services, as determined under section 1395x(v) of this title, or

(ii) the customary charges with respect to such services,

or, if such services are furnished by a public provider of services, or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this provision), free of charge or at nominal charges to the public, the amount determined in accordance with section 1395f(b)(2) of this title;

(B) with respect to other items and services (except those described in subparagraph (C) or (D) of this paragraph and except as may be provided in section 1395ww of this title)—

[*See main edition for text of* (i)]

(ii) if such services are furnished by a public provider of services, or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this clause), free of charge or at nominal charges to the public, 80 percent of the amount determined in accordance with section 1395f(b)(2) of this title, or

(iii) if (and for so long as) the conditions described in section 1395f(b)(3) of this title are met, the amounts determined under the reimbursement system described in such section;

(C) with respect to services described in the second sentence of section 1395x(p) of this title, 80 percent of the reasonable charges for such services; and

(D) with respect to clinical diagnostic laboratory tests for which payment is made under this part (i) on the basis of a fee schedule determined under subsection (h)(1) of this section, the amount paid shall be equal to 80 percent (or 100 percent, in the case of such tests for which payment is made on the basis of an assignment described in section 1395u(b)(3)(B)(ii) of this title, under the procedure described in section 1395gg(f)(1) of this title, to a provider having an agreement under section 1395cc of this title, or for tests furnished in connection with obtaining a second opinion required under section 1320c-13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion)) of the lesser of the amount determined under such fee schedule, the limitation amount for that test determined under subsection (h)(4)(B) of this section, or the amount of the charges billed for the tests, or (ii) on the basis of a negotiated rate established under subsection (h)(6) of this section, the amount paid shall be equal to 100 percent of such negotiated rate for such tests;

(3) in the case of services described in subparagraphs (D) and (E) of section 1395k(a)(2) of this title, the costs which are reasonable and related to the cost of furnishing such services or which are based on such other tests of reasonableness as the Secretary may

[1] So in original. A comma probably should appear instead of "; and".

[2] So in original. The comma probably should be a semicolon.

prescribe in regulations, including those authorized under section 1395x(v)(1)(A) of this title, less the amount a provider may charge as described in clause (ii) of section 1395cc(a)(2)(A) of this title, but in no case may the payment for such services (other than for items and services described in section 1395x(s)(10)(A) of this title and for items and services furnished in connection with obtaining a second opinion required under section 1320c-13(c)(2) of this title, or a third opinion, if the second opinion was in disagreement with the first opinion) exceed 80 percent of such costs; and

(4) in the case of facility services described in section 1395k(a)(2)(F) of this title, and outpatient hospital facility services furnished in connection with surgical procedures specified by the Secretary pursuant to subsection (i)(1)(A) of this section, the applicable amount as determined under paragraph (2) or (3) of subsection (i) of this section.

(b) Deductible provision

Before applying subsection (a) of this section with respect to expenses incurred by an individual during any calendar year, the total amount of the expenses incurred by such individual during such year (which would, except for this subsection, constitute incurred expenses from which benefits payable under subsection (a) of this section are determinable) shall be reduced by a deductible of $75; except that (1) such total amount shall not include expenses incurred for items and services described in section 1395x(s)(10)(A) of this title, (2) such deductible shall not apply with respect to home health services, (3) such deductible shall not apply with respect to clinical diagnostic laboratory tests for which payment is made under this part (A) under subsection (a)(1)(D)(i) or (a)(2)(D)(i) of this section on the basis of an assignment described in section 1395u(b)(3)(B)(ii) of this title, under the procedure described in section 1395gg(f)(1) of this title, or to a provider having an agreement under section 1395cc of this title, or (B) on the basis of a negotiated rate determined under subsection (h)(6) of this section, and (4) such deductible shall not apply with respect to items and services furnished in connection with obtaining a second opinion required under section 1320c-13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion). The total amount of the expenses incurred by an individual as determined under the preceding sentence shall, after the reduction specified in such sentence, be further reduced by an amount equal to the expenses incurred for the first three pints of whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished to the individual during the calendar year, except that such deductible for such blood shall in accordance with regulations be appropriately reduced to the extent that there has been a replacement of such blood (or equivalent quantities of packed red blood cells, as so defined); and for such purposes blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual shall be deemed replaced when the institution or other person furnishing such blood (or such equivalent quantities of packed red blood cells, as so defined) is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual with respect to which a deduction is made under this sentence.

[*See main edition for text of* (c) *to* (e)]

(f) Transferred

(g) Physical therapy services

In the case of services described in the second sentence of section 1395x(p) of this title, with respect to expenses incurred in any calendar year, no more than $500 shall be considered as incurred expenses for purposes of subsections (a) and (b) of this section. In the case of outpatient occupational therapy services which are described in the second sentence of section 1395x(p) of this title through the operation of section 1395x(g) of this title, with respect to expenses incurred in any calendar year, no more than $500 shall be considered as incurred expenses for purposes of subsections (a) and (b) of this section.

(h) Fee schedules for clinical diagnostic laboratory tests; percentage of prevailing charge level; nominal fee for samples; adjustments; recipients of payments; negotiated payment rate

(1)(A) The Secretary shall establish fee schedules for clinical diagnostic laboratory tests for which payment is made under this part, other than such tests performed by a provider of services for an inpatient of such provider.

(B) In the case of clinical diagnostic laboratory tests performed by a physician or by a laboratory (other than tests performed by a qualified hospital laboratory (as defined in subparagraph (D)) for outpatients of such hospital), the fee schedules established under subparagraph (A) shall be established on a regional, statewide, or carrier service area basis (as the Secretary may determine to be appropriate) for tests furnished during the period beginning on July 1, 1984, and ending on December 31, 1989. For such tests furnished on or after January 1, 1990, the fee schedule shall be established on a nationwide basis.

(C) In the case of clinical diagnostic laboratory tests performed by a qualified hospital laboratory (as defined in subparagraph (D)) for outpatients of such hospital, the fee schedules established under subparagraph (A) shall be established on a regional, statewide, or carrier service area basis (as the Secretary may determine to be appropriate) for tests furnished during the period beginning on July 1, 1984.

(D) In this subsection, the term "qualified hospital laboratory" means a hospital laboratory which provides some clinical diagnostic laboratory tests 24 hours a day in order to serve a hospital emergency room which is available to provide services 24 hours a day and 7 days a week.

(2) Except as provided in paragraph (4), the Secretary shall set the fee schedules at 60 percent (or, in the case of a test performed by a

qualified hospital laboratory (as defined in paragraph (1)(D)) for outpatients of such hospital, 62 percent) of the prevailing charge level determined pursuant to the third and fourth sentences of section 1395u(b)(3) of this title for similar clinical diagnostic laboratory tests for the applicable region, State, or area for the 12-month period beginning July 1, 1984, adjusted annually (to become effective on January 1 of each year) by a percentage increase or decrease equal to the percentage increase or decrease in the Consumer Price Index for All Urban Consumers (United States city average), and subject to such other adjustments as the Secretary determines are justified by technological changes. The Secretary may make further adjustments or exceptions to the fee schedules to assure adequate reimbursement of (A) emergency laboratory tests needed for the provision of bona fide emergency services, and (B) certain low volume high-cost tests where highly sophisticated equipment or extremely skilled personnel are necessary to assure quality.

(3) In addition to the amounts provided under the fee schedules, the Secretary shall provide for and establish (A) a nominal fee to cover the appropriate costs in collecting the sample on which a clinical diagnostic laboratory test was performed and for which payment is made under this part, except that not more than one such fee may be provided under this paragraph with respect to samples collected in the same encounter, and (B) a fee to cover the transportation and personnel expenses for trained personnel to travel to the location of an individual to collect the sample, except that such a fee may be provided only with respect to an individual who is homebound or an inpatient in an inpatient facility (other than a hospital).

(4)(A) In establishing any fee schedule under this subsection, the Secretary may provide for an adjustment to take into account, with respect to the portion of the expenses of clinical diagnostic laboratory tests attributable to wages, the relative difference between a region's or local area's wage rates and the wage rate presumed in the data on which the schedule is based.

(B) For purposes of subsections (a)(1)(D)(i) and (a)(2)(D)(i) of this section, the limitation amount for a clinical diagnostic laboratory test performed—

(i) on or after July 1, 1986, and before January 1, 1988, is equal to 115 percent of the median of all the fee schedules established for that test for that laboratory setting under paragraph (1), or

(ii) after December 31, 1987, and so long as a fee schedule for the test has not been established on a nationwide basis, is equal to 110 percent of the median of all the fee schedules established for that test for that laboratory setting under paragraph (1).

(5)(A) In the case of a bill or request for payment for a clinical diagnostic laboratory test for which payment may otherwise be made under this part on the basis of an assignment described in section 1395u(b)(3)(B)(ii) of this title, under the procedure described in section 1395gg(f)(1) of this title, or under a provider agreement under section 1395cc of this title, payment may be made only to the person or entity which performed or supervised the performance of such test; except that—

(i) if a physician performed or supervised the performance of such test, payment may be made to another physician with whom he shares his practice, and

(ii) in the case of a test performed at the request of a laboratory by another laboratory, payment may be made to the referring laboratory.

(B) In the case of such a bill or request for payment for a clinical diagnostic laboratory test for which payment may otherwise be made under this part, and which is not described in subparagraph (A), payment may be made to the beneficiary only on the basis of the itemized bill of the person or entity which performed or supervised the performance of the test.

(C) Payment for a clinical diagnostic laboratory test performed by a laboratory other than a rural health clinic may only be made on the basis of an assignment described in section 1395u(b)(3)(B)(ii) of this title, in accordance with section 1395u(b)(6)(B) of this title, under the procedure described in section 1395gg(f)(1) of this title, or to a provider of services with an agreement in effect under section 1395cc of this title.

(6) In the case of any diagnostic laboratory test payment for which is not made on the basis of a fee schedule under paragraph (1), the Secretary may establish a payment rate which is acceptable to the person or entity performing the test and which would be considered the full charge for such tests. Such negotiated rate shall be limited to an amount not in excess of the total payment that would have been made for the services in the absence of such rate.

(i) Outpatient surgery

(1) The Secretary shall, in consultation with appropriate medical organizations—

[*See main edition for text of (A) and (B)*]

The lists of procedures established under subparagraphs (A) and (B) shall be reviewed and updated not less often than every 2 years.

(2)(A) The amount of payment to be made for facility services furnished in connection with a surgical procedure specified pursuant to paragraph (1)(A) and furnished to an individual in an ambulatory surgical center described in such paragraph shall be equal to 80 percent of a standard overhead amount established by the Secretary (with respect to each such procedure) on the basis of the Secretary's estimate of a fair fee which—

[*See main edition for text of (i) and (ii)*]

Each amount so established shall be reviewed and updated not later than July 1, 1987, and annually thereafter and may be adjusted by the Secretary, when appropriate, to take account of varying conditions in different areas.

(B) The amount of payment to be made under this part for facility services furnished, in connection with a surgical procedure specified pursuant to paragraph (1)(B), in a physi-

cian's office shall be equal to 80 percent of a standard overhead amount established by the Secretary (with respect to each such procedure) on the basis of the Secretary's estimate of a fair fee which—

[*See main edition for text of* (i) *and* (ii)]

Each amount so established shall be reviewed and updated not later than July 1, 1987, and annually thereafter and may be adjusted by the Secretary, when appropriate, to take account of varying conditions in different areas.

(3)(A) The aggregate amount of the payments to be made under this part for outpatient hospital facility services furnished in connection with surgical procedures specified under paragraph (1)(A) in a cost reporting period shall be equal to the lesser of—

(i) the amount determined with respect to such services under subsection (a)(2)(B) of this section; or

(ii) the blend amount (described in subparagraph (B)).

(B)(i) The blend amount for a cost reporting period is the sum of—

(I) the cost proportion (as defined in clause (ii)(I)) of the amount described in subparagraph (A)(i), and

(II) the ASC proportion (as defined in clause (ii)(II)) of 80 percent of the standard overhead amount payable with respect to the same surgical procedure as if it were provided in an ambulatory surgical center in the same area, as determined under paragraph (2)(A).

(ii) In this paragraph:

(I) The term "cost proportion" means 75 percent for cost reporting periods beginning in fiscal year 1988, and 50 percent for other cost reporting periods.

(II) The term "ASC proportion" means 25 percent for cost reporting periods beginning in fiscal year 1988, and 50 percent for other cost reporting periods.

(4) In the case of services (including all pre- and post-operative services) described in paragraphs (1) and (2)(A) of section 1395x(s) of this title and furnished in connection with surgical procedures (specified pursuant to paragraph (1) of this subsection) in a physician's office, an ambulatory surgical center described in such paragraph, or a hospital outpatient department, payment for such services shall be determined in accordance with subsection (a)(1)(F) of this section if the physician accepts an assignment described in section 1395u(b)(3)(B)(ii) of this title with respect to payment for such services.

(5)(A) The Secretary is authorized to provide by regulations that in the case of a surgical procedure, specified by the Secretary pursuant to paragraph (1)(A), performed in an ambulatory surgical center described in such paragraph, there shall be paid (in lieu of any amounts otherwise payable under this part) with respect to the facility services furnished by such center and with respect to all related services (including physicians' services, laboratory, X-ray, and diagnostic services) a single all-inclusive fee established pursuant to subparagraph (B), if all parties furnishing all such services agree to accept such fee (to be divided among the parties involved in such manner as they shall have previously agreed upon) as full payment for the services furnished.

(B) In implementing this paragraph, the Secretary shall establish with respect to each surgical procedure specified pursuant to paragraph (1)(A) the amount of the all-inclusive fee for such procedure, taking into account such factors as may be appropriate. The amount so established with respect to any surgical procedure shall be reviewed periodically and may be adjusted by the Secretary, when appropriate, to take account of varying conditions in different areas.

[*See main edition for text of* (j)]

(k) Hepatitis B vaccine

With respect to services described in section 1395x(s)(10)(B) of this title, the Secretary may provide, instead of the amount of payment otherwise provided under this part, for payment of such an amount or amounts as reasonably reflects the general cost of efficiently providing such services.

(l) Fee schedule for services of certified registered nurse anesthetists

(1) The Secretary shall establish a fee schedule for services of certified registered nurse anesthetists under section 1395x(s)(11) of this title.

(2) Except as provided in paragraph (3), the fee schedule established under paragraph (1) shall be initially based on audited data from cost reporting periods ending in fiscal year 1985. The fee schedule shall be adjusted annually (to become effective on January 1 of each calendar year) by the percentage increase in the MEI (as defined in section 1395u(b)(4)(E)(ii) of this title) for that year.

(3)(A) In establishing the initial fee schedule for those services, the Secretary shall adjust the fee schedule to the extent necessary to ensure that the estimated total amount which will be paid under this subchapter for those services plus applicable coinsurance in 1989 will equal the estimated total amount which would be paid under this subchapter for those services in 1989 if the services were included as inpatient hospital services and payment for such services was made under part A of this subchapter in the same manner as payment was made in fiscal year 1987, adjusted to take into account changes in prices and technology relating to the administration of anesthesia.

(B) The Secretary shall also reduce the prevailing charge of physicians for medical direction of a certified registered nurse anesthetist, or the fee schedule for services of certified registered nurse anesthetists, or both, to the extent necessary to ensure that the estimated total amount which will be paid under this subchapter plus applicable coinsurance for such medical direction and such services in 1989 and 1990 will not exceed the estimated total amount which would have been paid but for the enactment of the amendments made by section 9320 of the Omnibus Budget Reconciliation Act of

1986. A reduced prevailing charge under this subparagraph shall become the prevailing charge but for subsequent years for purposes of applying the economic index under the fourth sentence of section 1395u(b)(3) of this title.

(4) In establishing the fee schedule under paragraph (1), the Secretary may utilize a system of time units, a system of base and time units, or any appropriate methodology. The Secretary may establish a nationwide fee schedule or adjust the fee schedule for geographic areas (as the Secretary may determine to be appropriate).

(5)(A) Payment for the services of a certified registered nurse anesthetist (for which payment may otherwise be made under this part) may be made on the basis of a claim or request for payment presented by the certified registered nurse anesthetist furnishing such services, or by a hospital, physician, or group practice with which the certified registered nurse anesthetist furnishing such services has an employment or contractual relationship that provides for payment to be made under this part for such services to such hospital, physician, or group practice.

(B)(i) Payment for the services of a certified registered nurse anesthetist under this part may be made only on an assignment-relatod basis, and any such assignment agreed to by a certified registered nurse anesthetist shall be binding upon any other person presenting a claim or request for payment for such services.

(ii) Except for deductible and coinsurance amounts applicable under this section, any person who knowingly and willfully presents, or causes to be presented, to an individual enrolled under this part a bill or request for payment for services of a certified registered nurse anesthetist for which payment may be made under this part only on an assignment-related basis is subject to a civil monetary penalty of not to exceed $2,000 for each such bill or request. Such a penalty shall be imposed in the same manner as civil monetary penalties are imposed under section 1320a-7a of this title with respect to actions described in subsection (a) of that section.

(C) No hospital that presents a claim or request for payment for services of a certified nurse anesthetist under this part may treat any uncollected coinsurance amount imposed under this part with respect to such services as a bad debt of such hospital for purposes of this subchapter.

(6)(A) If an adjustment under paragraph (3)(B) results in a reduction in the reasonable charge for a physicians' service and a nonparticipating physician furnishes the service to an individual entitled to benefits under this part (subject to subparagraph (D)), the physician may not charge the individual more than the limiting charge (as defined in subparagraph (B)) plus (for services furnished during the 12-month period beginning on the effective date of the reduction) ¼ of the amount by which the physician's actual charges for the service for the previous 12-month period exceeds the limiting charge.

(B) In subparagraph (A), the term "limiting charge" means, with respect to a service, 125 percent of the prevailing charge for the service after the reduction referred to in subparagraph (A).

(C) If a physician knowingly and willfully imposes charges in violation of subparagraph (A), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section.

(D) This paragraph shall not apply to services furnished after the earlier of (i) December 31, 1990, or (ii) one-year after the date the Secretary reports to Congress, under section 1395w-1(e)(3) of this title, on the development of the relative value scale under section 1395w-1 of this title.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2303(a)-(d), 2305(a)-(d), 2308(b)(2)(B), 2321(b), (d)(4)(A), 2323(b)(1), (2), (4), 2354(b)(5), (7), 98 Stat. 1064, 1069, 1070, 1074, 1084-1086, 1100; Nov. 8, 1984, Pub. L. 98-617, § 3(b)(2), (3), 98 Stat. 3295; Apr. 7, 1986, Pub. L. 99-272, title IX, §§ 9303(a)(1), (b)(1)-(3), 9401(b)(1), (2)(A)-(E), 100 Stat. 188, 189, 198, 199; Oct. 21, 1986, Pub. L. 99-509, title IX, §§ 9320(e)(1), (2), 9337(b), 9339(a)(1), (b)(1), (2), (c)(1), 9343(a), (b), (e)(2), 100 Stat. 2014, 2033, 2036, 2039-2041.)

REFERENCES IN TEXT

The amendments made by section 9320 of the Omnibus Budget Reconciliation Act of 1986, referred to in subsec. (l)(3)(B), are amendments made by section 9320 of Pub. L. 99-509, which amended sections 1395k, 1395l, 1395u, 1395x, 1395y, 1395aa, 1395bb, 1395cc, 1395ww, 1396a, and 1396n of this title and provisions set out as a note under section 1395ww of this title.

AMENDMENTS

1986—Subsec. (a)(1)(D). Pub. L. 99-272, § 9401(b)(2)(B), substituted ", under the procedure described in section 1395gg(f)(1) of this title, or for tests furnished in connection with obtaining a second opinion required under section 1320c-13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion)" for "or under the proeedure described in section 1395gg(f)(1) of this title".

Subsec. (a)(1)(D)(i). Pub. L. 99-272, § 9303(b)(1), inserted ", the limitation amount for that test determined under subsection (h)(4)(B) of this section," after "lesser of the amount determined under such fee schedule".

Subsec. (a)(1)(G). Pub. L. 99-272, § 9401(b)(2)(A), added cl. (G).

Subsec. (a)(1)(H). Pub. L. 99-509, § 9320(e)(1), added cl. (H).

Subsec. (a)(2)(A). Pub. L. 99-272, § 9401(b)(2)(C), inserted ", to items and services (other than clinical diagnostic laboratory tests) furnished in conneetion with obtaining a second opinion required under section 1320c-13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion)," after "(other than durable medical equipment)".

Subsec. (a)(2)(D). Pub. L. 99-272, § 9401(b)(2)(D), substituted "to a provider having an agreement under section 1395cc of this title, or for tests furnished in connection with obtaining a second opinion required under section 1320c-13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion)" for "or to a provider having an agreement under section 1395cc of this title".

Subsec. (a)(2)(D)(i). Pub. L. 99-272, § 9303(b)(1), inserted ", the limitation amount for that test determined under subsection (h)(4)(B) of this section,"

after "lesser of the amount determined under such fee schedule".

Subsec. (a)(3). Pub. L. 99-272, § 9401(b)(2)(E), inserted "and for items and services furnished in connection with obtaining a second opinion required under section 1320c-13(c)(2) of this title, or a third opinion, if the second opinion was in disagreement with the first opinion" after "1395x(s)(10)(A) of this title".

Subsec. (a)(4). Pub. L. 99-509, § 9343(a)(1)(A), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "in the case of facility services described in subparagraph (F) of section 1395k(a)(2) of this title, the applicable amount described in paragraph (2) of subsection (l) of this section."

Subsec. (b)(3). Pub. L. 99-509, § 9343(e)(2)(A), redesignated cl. (4) as (3) and struck out former cl. (3) which read as follows: "such total amount shall not include expenses incurred for services the amount of payment for which is determined under subsection (a)(1)(F) of this section or under subsection (l)(2) or (l)(5) of this section,".

Pub. L. 99-509, § 9343(a)(2), substituted "(l)(5)" for "(l)(4)".

Subsec. (b)(4). Pub. L. 99-509, § 9343(e)(2)(A), redesignated cl. (5) as (4). Former cl. (4) redesignated (3).

Subsec. (b)(5). Pub. L. 99-509, § 9343(e)(2)(A), redesignated cl. (5) as (4).

Pub. L. 99-272, § 9401(b)(1), added cl. (5).

Subsec. (g). Pub. L. 99-509, § 9337(b), substituted "second sentence" for "next to last sentence", and inserted at end "In the case of outpatient occupational therapy services which are described in the second sentence of section 1395x(p) of this title through the operation of section 1395x(g) of this title, with respect to expenses incurred in any calendar year, no more than $500 shall be considered as incurred expenses for purposes of subsections (a) and (b) of this section."

Subsec. (h)(1)(B). Pub. L. 99-509, § 9339(b)(1), substituted "December 31, 1989" and "January 1, 1990" for "December 31, 1987" and "January 1, 1988", respectively.

Pub. L. 99-509, § 9339(a)(1)(A), substituted "qualified hospital laboratory (as defined in subparagraph (D))" for "hospital laboratory".

Pub. L. 99-272, § 9303(a)(1)(A), substituted "December 31, 1987" for "June 30, 1987" and "January 1, 1988" for "July 1, 1987".

Subsec. (h)(1)(C). Pub. L. 99-509, § 9339(a)(1)(B), subetituted "qualified hospital laboratory (as defined in subparagraph (D))" for "hospital laboratory", struck out ", and ending on December 31, 1987" after "July 1, 1984", and struck out "For such tests furnished on or after January 1, 1988, the fee schedule under subparagraph (A) shall not apply with respect to clinical diagnostic laboratory tests performed by a hospital laboratory for outpatients of such hospital." which constituted second sentence.

Pub. L. 99-272, § 9303(a)(1)(A), substituted "December 31, 1987" for "June 30, 1987" and "January 1, 1988" for "July 1, 1987".

Subsec. (h)(1)(D). Pub. L. 99-509, § 9339(a)(1)(C), added subpar. (D).

Subsec. (h)(2). Pub. L. 99-509, § 9339(b)(2), struck out "(or, effective January 1, 1988, for the United States)" after "applicable region, State, or area".

Pub. L. 99-509, § 9339(a)(1)(D), substituted "qualified hospital laboratory (as defined in paragraph (1)(D))" for "hospital laboratory".

Pub. L. 99-272, § 9303(a)(1), substituted "January 1, 1988" for "July 1, 1987", and inserted "(to become effective on January 1 of each year)" after "adjusted annually".

Subsec. (h)(3). Pub. L. 99-509, § 9339(c)(1), inserted cl. (A) designation after "provide for and establish", and added cl. (B).

Subsec. (h)(4). Pub. L. 99-272, § 9303(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (h)(5)(C). Pub. L. 99-272, § 9303(b)(3), substituted "laboratory other than" for "laboratory which is independent of a physician's office or".

Subsec. (i)(1). Pub. L. 99-509, § 9343(b)(2), inserted at end "The lists of procedures established under subparagraphs (A) and (B) shall be reviewed and updated not less often than every 2 years."

Subsec. (i)(2). Pub. L. 99-509, § 9343(e)(2)(B), inserted "80 percent of" before "a standard overhead amount" in introductory provisions of subpars. (A) and (B).

Pub. L. 99-509, § 9343(b)(1), substituted "shall be reviewed and updated not later than July 1, 1987, and annually thereafter" for "shall be reviewed periodically" in concluding provisions of subpars. (A) and (B).

Subsec. (i)(3) to (5). Pub. L. 99-509, § 9343(a)(1)(B), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Subsec. (l). Pub. L. 99-509, § 9320(e)(2), added subsec. (l).

1984—Subsec. (a)(1). Pub. L. 98-369, § 2354(b)(7), struck out "and" at the end.

Subsec. (a)(1)(B). Pub. L. 98-369, § 2323(b)(1), substituted "section 1395x(s)(10)(A) of this title" for "section 1395x(s)(10) of this title".

Subsec. (a)(1)(D). Pub. L. 98-369, § 2303(a), amended cl. (D) generally. Prior to amendment, cl. (D) read as follows: "with respect to diagnostic tests performed in a laboratory for which payment is made under this part to the laboratory, the amounts paid shall be equal to 100 percent of the negotiated rate for such tests (as determined pursuant to subsection (h) of this section),".

Subsec. (a)(1)(F), (G). Pub. L. 98-369, § 2305(a), redesignated cl. (G) as (F), and struck out former cl. (F) which related to payment of reasonable charges for preadmission diagnostic services furnished by a physician to individuals enrolled under this part which are furnished in the outpatient department of a hospital within seven days of such individual's admission to the same hospital or another hospital or furnished in the physician's office within seven days of such individual's admission to a hospital as an inpatient.

Subsec. (a)(2). Pub. L. 98-369, § 2305(c), struck out "and in paragraph (5) of this subsection" after "of such section".

Subsec. (a)(2)(A). Pub. L. 98-617, § 3(b)(2), inserted ", or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this provision),".

Pub. L. 98-369, § 2354(b)(5), realigned margin of subpar. (A).

Pub. L. 98-369, § 2321(b)(1), inserted in provision preceding cl. (i) "(other than durable medical equipment)".

Pub. L. 98-369, § 2323(b)(1), substituted "section 1395x(s)(10)(A) of this title" for "section 1395x(s)(10) of this title".

Subsec. (a)(2)(B). Pub. L. 98-369, § 2354(b)(5), realigned margin of subpar. (B).

Pub. L. 98-369, § 2321(b)(2), inserted in provision preceding cl. (i) "items and" after "to other".

Pub. L. 98-369, § 2303(b)(1), inserted "or (D)" after "subparagraph (C)".

Subsec. (a)(2)(B)(ii). Pub. L. 98-369, § 2308(b)(2)(B), inserted ", or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this clause),".

Subsec. (a)(2)(D). Pub. L. 98-369, § 2303(b)(2)-(4), added subpar. (D).

Subsec. (a)(3). Pub. L. 98-369, § 2323(b)(1), substituted "section 1395x(s)(10)(A) of this title" for "section 1395x(s)(10) of this title".

Subsec. (a)(5). Pub. L. 98-369, § 2305(b), struck out par. (5) which related to payment of reasonable costs for preadmission diagnostic services described in section 1395x(s)(2)(C) of this title furnished to an individual by the outpatient department of a hospital within seven days of such individual's admission to the same hospital as an inpatient or to another hospital.

Subsec. (b)(1). Pub. L. 98-369, § 2323(b)(2), substituted "section 1395x(s)(10)(A) of this title" for "section 1395x(s)(10) of this title".

Subsec. (b)(3). Pub. L. 98-369, § 2305(d), substituted "subsection (a)(1)(F)" for "subsection (a)(1)(G)".

Subsec. (b)(4). Pub. L. 98-369, § 2303(c), added cl. (4).

Subsec. (f). Pub. L. 98-369, § 2321(d)(4)(A), transferred subsec. (f) to part C of this subchapter and redesignated its provisions as section 1889 of the Social Security Act, which is classified to section 1395zz of this title.

Subsec. (h). Pub. L. 98-369, § 2303(d), amended subsec. (h) generally, substituting provisions directing the Secretary to establish fee schedules for clinical diagnostic laboratory tests at a percentage of the prevailing charge level and nominal fees to cover costs in collecting samples and authorizing the Secretary to make adjustments in the fee schedule, setting forth the recipients of payments, and authorizing the Secretary to establish a negotiated payment rate for provision authorizing the Secretary to establish a negotiated rate of payment with the laboratory which would be considered the full charge for such tests.

Subsec. (h)(5)(C). Pub. L. 98-617, § 3(b)(3), inserted a comma before "under the procedure described in section".

Subsec. (i)(3). Pub. L. 98-369, § 2305(d), substituted "subsection (a)(1)(F)" for "subsection (a)(1)(G)".

Subsec. (k). Pub. L. 98-369, § 2323(b)(4), added subsec. (k).

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 9320(e)(1) and (2) of Pub. L. 99-509 applicable to services furnished on or after Jan. 1, 1989, see section 9320(i) of Pub. L. 99-509, set out as a note under section 1395k of this title.

Amendment by section 9337(b) of Pub. L. 99-509 applicable to expenses incurred for outpatient occupational therapy services furnished on or after July 1, 1987, see section 9337(e) of Pub. L. 99-509, set out as a note under section 1395k of this title.

Section 9339(a)(2) of Pub. L. 99-509 provided that: "The amendments made by this subsection [amending this section] apply to clinical diagnostic laboratory tests performed on or after January 1, 1987."

Section 9329(c)(2) of Pub. L. 99-509 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to samples collected on or after January 1, 1987."

Section 9343(h) of Pub. L. 99-509 provided that:

"(1) The amendments made by subsection (a)(1) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1987.

"(2) The amendments made by subsections (b)(1) and (d) [amending this section and section 1320c-3 of this title] shall apply to services furnished after June 30, 1987.

"(3) The Secretary of Health and Human Services shall first provide, under the amendment made by subsection (b)(2) [amending this section], for the review and update of procedure lists within 6 months after the date of the enactment of this Act [Oct. 21, 1986].

"(4) The amendments made by subsection (c) [amending sections 1395y and 1395cc of this title] shall apply to contracts entered into or renewed after January 1, 1987."

Section 9303(a)(2) of Pub. L. 99-272 provided that: "The amendments made by paragraph (1) [amending this section] shall apply to clinical laboratory diagnostic tests performed on or after July 1, 1986."

Section 9303(b)(5)(A), (B) of Pub. L. 99-272 provided that:

"(A) The amendments made by paragraphs (1) and (2) [amending this section] shall apply to clinical diagnostic laboratory tests performed on or after July 1, 1986.

"(B) The amendment made by paragraph (3) [amending this section] shall apply to clinical diagnostic laboratory tests performed on or after January 1, 1987."

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98-369, see section 3(c) of Pub. L. 98-617, set out as a note under section 1395f of this title.

Section 2303(j) of Pub. L. 98-369 provided that:

"(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [amending sections 1395*l*, 1395u, 1395cc, 1396a, and 1396b of this title and enacting provisions set out as notes under sections 1395*l* and 1395u of this title] shall apply to clinical diagnostic laboratory tests furnished on or after July 1, 1984.

"(2) The amendments made by subsection (g)(2) [amending section 1396b of this title] shall apply to payments for calendar quarters beginning on or after October 1, 1984.

"(3) The amendments made by this section shall not apply to clinical diagnostic laboratory tests furnished to inpatients of a provider operating under a waiver granted pursuant to section 602(k) of the Social Security Amendments of 1983 [section 602(k) of Pub. L. 98-21, set out as a note under section 1395y of this title]. Payment for such services shall be made under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.] at 80 percent (or 100 percent in the case of such tests for which payment is made on the basis of an assignment described in section 1842(b)(3)(B)(ii) of the Social Security Act [42 U.S.C. 1395u(b)(3)(B)(ii)] or under the procedure described in section 1870(f)(1) of such Act [42 U.S.C. 1395gg(f)(1)]) of the reasonable charge for such service. The deductible under section 1833(b) of such Act [42 U.S.C. 1395*l*(b)] shall not apply to such tests if payment is made on the basis of such an assignment or procedure."

Section 2305(e) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this section and enacting provisions set out as a note below] shall apply to services performed after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2321(b) and (d)(4)(A) of Pub. L. 98-369 applicable to items and services furnished on or after July 18, 1984, see section 2321(g) of Pub. L. 98-369, set out as a note under section 1395f of this title.

Section 2323(d) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 1395*l*, 1395x, 1395cc, and 1395rr of this title and enacting provisions set out as a note below] apply to services furnished on or after September 1, 1984."

Amendment by section 2354(b)(5), (7) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

REPORT ON ESTABLISHMENT OF NATIONAL FEE SCHEDULES FOR PAYMENT OF CLINICAL DIAGNOSTIC LABORATORY TESTS

Section 9339(b)(3) of Pub. L. 99-509 provided that: "The Secretary of Health and Human Services shall report to Congress, by not later than April 1, 1988, on the advisability and feasibility of, and methodology for, establishing national fee schedules for payment for clinical diagnostic laboratory tests under section 1833(h) of the Social Security Act [42 U.S.C. 1395*l*(h)]."

STATE STANDARDS FOR DIRECTORS OF CLINICAL LABORATORIES

Section 9339(d) of Pub. L. 99-509 provided that:

"(1) IN GENERAL.—If a State (as defined for purposes of title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.]) provides for the licensing or other standards with respect to the operation of clinical laborato-

ries (including such laboratories in hospitals) in the State under which such a laboratory may be directed by an individual with certain qualifications, nothing in such title shall be construed as authorizing the Secretary of Health and Human Services to require such a laboratory, as a condition of payment or participation under such title, to be directed by an individual with other qualifications.

"(2) EFFECTIVE DATE.—Paragraph (1) shall take effect on January 1, 1987."

TRANSITIONAL PROVISIONS FOR PAYMENT OF FEES FOR CLINICAL DIAGNOSTIC LABORATORY TESTS

Section 9303(a)(3) of Pub. L. 99-272 provided that: "The Secretary of Health and Human Services shall provide that the annual adjustment under section 1833(h) of the Social Security Act [42 U.S.C. 1395l(h)] for 1986—

"(A) shall take effect on January 1, 1987,

"(B) shall apply for the 12-month period beginning on that date, and

"(C) shall take into account the percentage increase or decrease in the Consumer Price Index for all urban consumers (United States city average) occurring over an 18-month period, rather than over a 12-month period."

EXTENSION OF MEDICARE PHYSICIAN PAYMENT PROVISIONS

Amount of payment under this part for physicians' services furnished between Oct. 1, 1985, and Mar. 14, 1986, to be determined on the same basis as the amount of such services furnished on Sept. 30, 1985, see section 5(b) of Pub. L. 99-107, as amended, set out as a note under section 1305ww of this title.

FEE SCHEDULES FOR DIAGNOSTIC LABORATORY TESTS AND FEASIBILITY OF DIRECT PAYMENTS TO PHYSICIANS; REPORT TO CONGRESS

Section 2303(i) of Pub. L. 98-369 provided that:

"(1) The Comptroller General shall report to the Congress on—

"(A) the appropriateness of the fee schedules under section 1833(h) of the Social Security Act [42 U.S.C. 1395l(h)] and their impact on the volume and quality of clinical diagnostic laboratory tests;

"(B) the potential impact of the adoption of a national fee schedule; and

"(C) the potential impact of applying a national fee schedule to clinical diagnostic laboratory tests provided by hospitals to their outpatients.

"(2) The Secretary of Health and Human Services shall report to the Congress with respect to the advisability and feasibility of a system of direct payment to any physician for all clinical diagnostic laboratory tests ordered by such physician.

"(3) The reports required by paragraphs (1) and (2) shall be submitted not later than January 1, 1987."

PACEMAKER REIMBURSEMENT REVIEW AND REFORM

Section 2304(a) of Pub. L. 98-369 provided that:

"(1) The Secretary of Health and Human Services shall issue revisions to the current guidelines for the payment under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.] for the transtelephonic monitoring of cardiac pacemakers. Such revised guidelines shall include provisions regarding the specifications for and frequency of transtelephonic monitoring procedures which will be found to be reasonable and necessary.

"(2)(A) Except as provided in subparagraph (B), if the guidelines required by paragraph (1) have not been issued and put into effect by October 1, 1984, and until such guidelines have been issued and put into effect, payment may not be made under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.] for transtelephonic monitoring procedures, with respect to a single-chamber cardiac pacemaker powered by lithium batteries, conductod more frequently than—

"(i) weekly during the first month after implantation,

"(ii) once every two months during the period representing 80 percent of the estimated life of the implanted device, and

"(iii) monthly thereafter.

"(B) Subparagraph (A) shall not apply in cases where the Secretary determines that special medical factors (including possible evidence of pacemaker or lead malfunction) justify more frequent transtelephonic monitoring procedures."

PAYMENT FOR PREADMISSION DIAGNOSTIC TESTING PERFORMED IN PHYSICIAN'S OFFICE

Section 2305(f) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this section and enacting provisions set out as a noto above] shall not be construed as prohibiting payment, subject to the applicable copayments, under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.] for preadmission diagnostic testing performed in a physician's office to the extent such testing is otherwise reimbursable under regulations of the Secretary."

PROVIDERS OF SERVICES TO CALCULATE AND REPORT LESSER-OF-COST-OR-CHARGES DETERMINATIONS SEPARATELY WITH RESPECT TO PAYMENTS UNDER PARTS A AND B OF THIS SUBCHAPTER; ISSUANCE OF REGULATIONS

For provision directing the Secretary to issue regulations requiring providers of services to calculate and report the lesser-of-cost-or-charges determinations separately with respect to payments for services under parts A and B of this subchapter other than diagnostic tests under subsec. (h) of this section, see section 2308(a) of Pub. L. 98-369, set out as a note under section 1395f of this title.

DETERMINATION OF NOMINAL CHARGES FOR APPLYING NOMINALITY TEST

For provision directing the Secretary to provide, in addition to other rules deemed appropriate, that charges representing 60 percent or less of costs be considered nominal for purposes of applying the nominality test under subsec. (a)(2)(B)(ii) of this section, see section 2308(b)(1) of Pub. L. 98-369, set out as a note under section 1395f of this title.

STUDY OF MEDICARE PART B PAYMENTS; COMPILATION OF CENTRALIZED CHARGE DATA BASE; REPORT TO CONGRESS

Section 2309 of Pub. L. 98-369 provided that:

"(a)(1) The Director of the Office of Technology Assessment shall conduct a study of physician reimbursement under the medicare program and report to Congress on such study not later than December 31, 1985. The report shall include specific findings and recommendations on methods by which payment amounts and other program policies under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.] may be modified—

"(A) to eliminate inequities in the relative amounts paid to physicians by type of service, locality, and specialty, with particular attention to any inequities between cognitive services and medical procedures; and

"(B) to increase incentives for physicians and other suppliers under such part to accept assignment for services covered under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.].

The study shall also examine the influence of payment methodology and payment levels on the utilization of services.

"(2) In carrying out the study under paragraph (1)(A), the Director shall take into account the relative time, complexity, investment in professional training, and overhead expenses necessary to the provision

of various medical services and procedures, as well as the influence of the changes in technology.

"(3) The report under paragraph (1)(A) shall include information on methodologies which could be applied in the development of fee schedules on a national or regional basis for payments under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.] in a manner consistent with the findings of the study under this subsection.

"(4) In preparing the report and recommendations, the Director shall consult with the Secretary of Health and Human Services and, as appropriate, with national organizations of physicians and other interested associations and individuals.

"(b) In order to assist the Director in completing the study and to facilitato Congressional review, the Secretary of Health and Human Services shall compile a centralized medicare part B charge data base, utilizing information gathered by the medicare carriers for charges in 1983. Such data shall include information, by procedure, on—

"(1) utilization,

"(2) assignment rates of physicians and suppliers,

"(3) actual, customary, and prevailing charges, and

"(4) the differences in charges by physician specialty and locality.

Such information shall be provided to the Director of the Office of Technology Assessment.

"(c) The Secretary shall review the report submitted under subsection (a)(1) and shall report to the Congress his comments on the report and recommendations for legislative amendments."

MONITORING PROVISION OF HEPATITIS B VACCINE; REVIEW OF CHANGES IN MEDICAL TECHNOLOGY

Section 2323(e) of Pub. L. 98-369 provided that: "The Secretary shall monitor the provision of hepatitis B vaccine under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.], and shall review any changes in medical technology which may have an effect on the amounts which should be paid for such service."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320c-3, 1395f, 1395k, 1395n, 1395u, 1395x, 1395cc, 1395mm, 1395rr, 1395uu, 1396a, 1396b, 1396d of this title.

§ 1395n. Procedure for payment of claims of providers of services

(a) Conditions for payment for services described in section 1395k(a)(2) of this title

Except as provided in subsections (b), (c), and (e) of this section, payment for services described in section 1395k(a)(2) of this title furnished an individual may be made only to providers of services which are eligible therefor under section 1395cc(a) of this title, and only if—

[*See main edition for text of (1)*]

(2) a physician certifies (and recertifies, where such services are furnished over a period of time, in such cases, with such frequency, and accompanied by such supporting material, appropriate to the case involved, as may be provided by regulations) that--

[*See main edition for text of (A)*]

(B) in the case of medical and other health services, except services described in subparagraphs (B), (C), and (D) of section 1395x(s)(2) of this title, such services are or were medically required;

(C) in the case of outpatient physical therapy services or outpatient occupational therapy services, (i) such services are or were required because the individual needed physical therapy services or occupational therapy services, respectiveiy,,[1] (ii) a plan for furnishing such services has been established by a physician or by the qualified physical therapist or qualified occupational therapist, respectively, providing such services and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician;

[*See main edition for text of (D) and (E)*]

To the extent provided by regulations, the certification and recertification requirements of paragraph (2) shall be deemed satisfied where, at a later date, a physician makes a certification of the kind provided in subparagraph (A) or (B) of paragraph (2) (whichever would have applied), but only where such certification is accompanied by such medical and other evidence as may be required by such regulations. For purposes of this section, the term "provider of services" shall include a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or agency meets the requirements of section 1395x(p)(4)(A) of this title (or meets the requirements of such section through the operation of section 1395x(g) of this title), or if, in the case of a public health agency, such agency meets the requirements of section 1395x(p)(4)(B) of this title (or meets the requirements of such section through the operation of section 1395x(g) of this title), but only with respect to the furnishing of outpatient physical therapy services (as therein defined) or (through the operation of section 1395x(g) of this title) with respect to the furnishing of outpatient occupational therapy services. With respect to the physician certification required by paragraph (2) for home health services furnished to any individual by a home health agency (other than an agency which is a governmental entity) and with respect to the establishment and review of a plan for such services, the Secretary shall prescribe regulations which shall become effective no later than July 1, 1981, and which prohibit a physician who has a significant ownership interest in, or a significant financial or contractual relationship with, such home health agency from performing such certification and from establishing or reviewing such plan, except that such prohibition shall not apply with respect to a home health agency which is a sole community home health agency (as determined by the Secretary). For purposes of the preceding sentence, service by a physician as an uncompensated officer or director of a home health agency shall not constitute having a significant ownership interest in, or a significant financial or contractual relationship with, such agency.

[*See main edition for text of (b) to (d)*]

[1] So in original.

(e) Payment to fund designated by medical staff or faculty of medical school

For purposes of services (1) which are inpatient hospital services by reason of paragraph (7) of section 1395x(b) of this title or for which entitlement exists by reason of clause (II) of section 1395k(a)(2)(B)(i) of this title, and (2) for which the reasonable cost thereof is determined under section 1395x(v)(1)(D) of this title (or would be if section 1395ww of this title did not apply), payment under this part shall be made to such fund as may be designated by the organized medical staff of the hospital in which such services were furnished or, if such services were furnished in such hospital by the faculty of a medical school, to such fund as may be designated by such faculty, but only if—

(A) such hospital has an agreement with the Secretary under section 1395cc of this title, and

(B) the Secretary has received written assurances that (i) such payment will be used by such fund solely for the improvement of care to patients in such hospital or for educational or charitable purposes and (ii) the individuals who were furnished such services or any other persons will not be charged for such services (or if charged provision will be made for return of any moneys incorrectly collected).

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, § 602(b), 97 Stat. 163; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2336(a), (b), 2342(b), 2354(b)(1), (8), (9), 98 Stat. 1091, 1094, 1100; Nov. 8, 1984, Pub. L. 98-617, § 3(a)(3), 98 Stat. 3295; Oct. 21, 1988, Pub. L. 99-509, title IX, § 9337(c), 100 Stat. 2034.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-509, § 9337(c)(2), which directed amendment of second sentence of subsec. (a) by inserting "(or meets the requirements of such section through the operation of section 1395x(g) of this title)" in two places, and inserting "or (through the operation of section 1395x(g) of this title) with respect to the furnishing of outpatient occupational therapy services", was executed by making such insertions in third sentence of subsec. (a), as the probable intent of Congress.

Subsec. (a)(2)(C). Pub. L. 99-509, § 9337(c)(1), inserted "or outpatient occupational therapy services" in introductory provisions, "or occupational therapy services, respectively," in cl. (i), and "or qualified occupational therapist, respectively," in cl. (ii).

1984—Subsec. (a). Pub. L. 98-369, § 2354(h)(1), as amended by Pub. L. 98-617, § 3(a)(3), in concluding provisions, substituted "contractual" for "contractural".

Pub. L. 98-369, § 2336(b), in concluding provisions, inserted provision that such prohibition shall not apply with respect to a home health agency which is a sole community home health agency (as determined by the Secretary).

Pub. L. 98-369, § 2336(a), in concluding provisions, inserted provision that for purposes of fourth sentence in subsec. (a), service by a physician as an uncompensated officer or director of a home health agency shall not constitute having a significant ownership interest in, or a significant financial or contractual relationship with, such agency.

Subsec. (a)(2)(B), (C). Pub. L. 98-369, § 2354(b)(8)(A), struck out "and" at end.

Subsec. (a)(2)(C)(ii). Pub. L. 98-369, § 2342(b), substituted "hy a physician or by the qualified physical therapist providing such services and is periodically reviewed by a physician" for ", and is periodically reviewed, by a physician".

Subsec. (a)(2)(D). Pub. L. 98-369, § 2354(b)(8)(B), realigned margin of subpar. (D).

Subsec. (e)(2). Pub. L. 98-369, § 2354(b)(9), designated concluding pars. (1) and (2) as (A) and (B), respectively, and in par. (B), inserted "(i)" after "written assurances that" and substituted "(ii) the individuals who" for "(B) the individuals who" and "return of" for "return for".

1963—Subsec. (e). Pub. L. 98-21 inserted "(or would be if section 1395ww of this title did not apply)" after "section 1395(v)(1)(D) of this title".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-509 applicable to expenses incurred for outpatient occupational therapy services furnished on or after July 1, 1987, see section 9337(e) of Pub. L. 99-509, set out as a note under section 1395k of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98-369, see section 3(c) of Pub. L. 98-617, set out as a note under section 1395f of this title.

Amendment by section 2336(a) of Pub. L. 98-369 applicable te certifications and plans of care made or established on or after July 18, 1984, see section 2336(c)(1) of Pub. L. 98-369, set out as a note under section 1395f of this title.

Section 2342(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 1395n and 1395x of this title] apply te plans of care established on or after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2354(b)(1), (8), (9), of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after Nov. 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98-21, set out as a note under section 1395ww of this title.

REVISION OF REGULATIONS REGARDING ACCESS TO HOME HEALTH SERVICES

Secretary of Health and Human Services required to provide, not later than 90 days after July 18, 1984, for revision of regulations as may be required to reflect amendment to subsec. (a) by section 2336(b) of Pub. L. 98-369, see section 2336(c)(2) of Pub. L. 98-369, set out as a note under section 1395f of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395f, 1395k, 1395x, 1395cc, 1395pp, 1395qq of this title.

§ 1395p. Enrollment periods

[See main edition for text of (a) to (f)]

(g) Commencement of enrollment period

All of the provisions of this section shall apply to individuals satisfying subsection (f) of this section, except that—

(1) in the case of an individual who satisfies subsection (f) of this section by reason of entitlement to disability insurance benefits described in section 426(b) of this title, his initial enrollment period shall begin on the first day of the later of (A) April 1973 or (B) the third month before the 25th month of such entitlement, and shall reoccur with each continuous period of eligibility (as defined in section 1395r(d) of this title) and upon attainment of age 65;

[*See main edition for text of (2) and (3); (h)*]

(i) Special enrollment periods

(1) In the case of an individual who—

(A) has attained the age of 65,

(B) at the time the individual first satisfies paragraph (1) or (2) of section 1395o of this title, is enrolled in a group health plan described in section 1395y(b)(3)(A)(iv) of this title by reason of the individual's (or the individual's spouse's) current employment, and

(C) has elected not to enroll (or to be deemed enrolled) under this section during the individual's initial enrollment period,

there shall be a special enrollment period described in paragraph (3). In the case of an individual who has not attained the age of 65, at the time the individual first satisfies paragraph (1) of section 1395o of this title, is enrolled in a large group health plan as an active individual (as those terms are defined in section 1395y(b)(4)(B) of this title), and has elected not to enroll (or to be deemed enrolled) under this section during the individual's initial enrollment period, there shall be a special enrollment period described in paragraph (3)(B).

(2) In the case of an individual who—

(A) has attained the age of 65;

(B)(i) has enrolled (or has been deemed to have enrolled) in the medical insurance program established under this part during the individual's initial enrollment period, or (ii) is an individual described in paragraph (1)(B);

(C) has enrolled in such program during any subsequent special enrollment period under this subsection during which the individual was not enrolled in a group health plan described in section 1395y(b)(3)(A)(iv) of this title by reason of the individual's (or individual's spouse's) current employment; and

(D) has not terminated enrollment under this section at any time at which the individual is not enrolled in such a group health plan by reason of the individual's (or individual's spouse's) current employment,

there shall be a special enrollment period described in paragraph (3). In the case of an individual who has not attained the age of 65, has enrolled (or has been deemed to have enrolled) in the medical insurance program established under this part during the individual's initial enrollment period, or is an individual described in the second sentence of paragraph (1), has enrolled in such program during any subsequent special enrollment period under this subsection during which the individual was not enrolled in a large group health plan as an active individual (as those terms are defined in section 1395y(b)(4)(B) of this title), and has not terminated enrollment under this section at any time at which the individual is not enrolled in such a large group health plan as an active individual, there shall be a special enrollment period described in paragraph (3)(B).

(3)(A) The special enrollment period referred to in the first sentences of paragraphs (1) and (2) is the period beginning with the first day of the first month in which the individual is no longer enrolled in a group health plan described in section 1395y(b)(3)(A)(iv) of this title by reason of current employment and ending seven months later.

(B) The special enrollment period referred to in the second sentences of paragraphs (1) and (2) is the period beginning with the first day of the first month in which the individual is no longer enrolled as an active individual in a large group health plan (as such terms are defined in section 1395y(b)(4)(B) of this title) and ending seven months later.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2338(b), 2354(b)(10), 98 Stat. 1092, 1101; Apr. 7, 1986, Pub. L. 99-272, title IX, §§ 9201(c)(1), 9219(a)(2), 100 Stat. 171, 182; Oct. 21, 1986, Pub. L. 99-509, title IX, § 9319(c)(1)-(3), 100 Stat. 2011; Oct. 22, 1986, Pub. L. 99-514, title XVIII, § 1895(b)(12), 100 Stat. 2934.)

AMENDMENTS

1986—Subsec. (i)(1). Pub. L. 99-509, § 9319(c)(1), inserted sentence at end providing for a special enrollment period described in paragraph (3)(B) for individuals not age 65, enrolled in a large health plan, and having elected not to enroll during initial enrollment period.

Subsec. (i)(1)(A). Pub. L. 99-514 realigned margins of subpar. (A).

Pub. L. 99-272, § 9219(a)(2)(A), amended subpar. (A) generally, substituting "has attained the age of 65" for "meets the conditions described in clauses (i) and (iii) of section 1395y(b)(3)(A) of this title".

Subsec. (i)(2). Pub. L. 99-509, § 9319(c)(2), inserted sentence at end providing for a special enrollment period described in paragraph (3)(B) for individuals not age 65, enrolled or deemed enrolled in the medical insurance program established under this part, or is an individual described in the second sentence of paragraph (1), has enrolled in such program during a subsequent special enrollment period during which the individual was not enrolled in a large group health plan, and has not terminated enrollment.

Subsec. (i)(2)(A). Pub. L. 99-272, § 9219(a)(2)(B), amended subpar. (A) generally, substituting "has attained the age of 65;" for "meets the conditions described in clauses (i) and (iii) of section 1395y(b)(3)(A) of this title,".

Subsec. (i)(2)(B). Pub. L. 99-272, § 9219(a)(2)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "has enrolled (or has been deemed to have enrolled) in the medical insurance program established under this part during the individual's initial enrollment period and any subsequent special enrollment period under this subsection during which the individual was not enrolled in a group health plan described in section 1395y(b)(3)(A)(iv) of this title by reason of the individual's (or individual's spouse's) current employment, and".

Subsec. (i)(2)(C), (D). Pub. L. 99-272, § 9219(a)(2)(B), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (i)(3). Pub. L. 99-509, § 9319(c)(3), designated existing provisions as subpar. (A), inserted "the first sentences of" after "referred to in", and added subpar. (B).

Pub. L. 99-272, § 9201(c)(1), amended par. (3) generally, striking out provision that the special enrollment period could be the period beginning with the first day of the third month before the month in which the individual attains the age of 70 and ending seven months later.

1984—Subsec. (g)(1). Pub. L. 98-369, § 2354(b)(10), substituted "section 426(b) of this title" for "section 426(a)(2)(B) of this title" and "section 1395r(d) of this title" for "section 1395(e) of this title".

Subsec. (i). Pub. L. 98-369, § 2338(b), added subsec. (i).

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 Pub. L. 99-509 applicable to enrollments occurring on or after Jan. 1, 1987, see section 9319(f)(2) of Pub. L. 99-509, set out as a note under section 1395y of this title.

Section 9201(d)(2) of Pub. L. 99-272 provided that: "The amendments made by subsections (b) and (c) [amending sections 1395p and 1395q of this title and sections 623 and 631 of Title 29, Labor] shall become effective on May 1, 1986."

Section 9219(a)(3)(B) of Pub. L. 99-272 provided that:

"(i) The amendments made by paragraph (2) [amending this section] shall apply to enrollments in months beginning with the first effective month (as defined in clause (ii)), except that in the case of any individual who would have a special enrollment period under section 1837(i) of the Social Security Act [42 U.S.C. 1395p(i)] that would have begun after November 1984 and before the first effective month, the period shall be deemed to begin with the first day of the first effective month.

"(ii) For purposes of clause (i), the term 'first effective month' means the first month that begins more than 90 days after the date of the enactment of this Act [Apr. 7, 1986]."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2338(d)(2) of Pub. L. 98-369 provided that:

"(A) The amendments made by subsections (b) and (c) [amending sections 1395p and 1395q of this title] shall apply to enrollments in months beginning with the first effective month, except that in the case of any individual who would have had a special enrollment period under section 1837(i) of the Social Security Act [subsec. (i) of this section] that would have begun before such first effective month, such period shall be deemed to begin with the first day of such first effective month.

"(B) For purposes of subparagraph (A), the term 'first effective month' means the first month which begins more than 90 days after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2354(b)(10) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

§ 1395q. Coverage period

[*See main edition for text of* (a)]

(b) Continuation

An individual's coverage period shall continue until his enrollment has been terminated—

[*See main edition for text of* (1) *and* (2)]

The termination of a coverage period under paragraph (1) shall (except as otherwise provided in section 1395v(e) of this title) take effect at the close of the month following the month in which the notice is filed. The termination of a coverage period under paragraph (2) shall take effect on a date determined under regulations, which may be determined so as to provide a grace period in which overdue premiums may be paid and coverage continued. The grace period determined under the preceding sentence shall not exceed 90 days; except that it may be extended to not to exceed 180 days in any case where the Secretary determines that there was good cause for failure to pay the overdue premiums within such 90-day period.

Where an individual who is deemed to have enrolled for medical insurance pursuant to section 1395p(f) of this title files a notice before the first day of the month in which his coverage period begins advising that he does not wish to be so enrolled, the termination of the coverage period resulting from such deemed enrollment shall take effect with the first day of the month the coverage would have been effective. Where an individual who is deemed enrolled for medical insurance benefits pursuant to section 1395p(f) of this title files a notice requesting termination of his deemed coverage in or after the month in which such coverage becomes effective, the termination of such coverage shall take effect at the close of the month following the month in which the notice is filed.

[*See main edition for text of* (c) *and* (d)]

(e) Commencement of coverage for special enrollment periods

Notwithstanding subsection (a) of this section, in the case of an individual who enrolls during a special enrollment period pursuant to section 1395p(i)(3) of this title—

(1) in the first month of the special enrollment period, the coverage period shall begin on the first day of that month, or

(2) in a month after the first month of the special enrollment period, the coverage period shall begin on the first day of the month following the month in which the individual so enrolls.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2338(c), 98 Stat. 1092; Apr. 7, 1986, Pub. L. 99-272, title IX, § 9201(c)(2), 100 Stat. 171; Oct. 21, 1986, Pub. L. 99-509, title IX, § 9344(b)(1), 100 Stat. 2042.)

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-509 substituted "month following the month" for "calendar quarter following the calendar quarter" in second and sixth sentences.

Subsec. (e). Pub. L. 99-272 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "Notwithstanding subsection (a) of this section, in the case of an individual who enrolls during a special enrollment period pursuant to—

"(1) subparagraph (A) of section 1395p(i)(3) of this title—

"(A) before the month in which he attains the age of 70, the coverage period shall begin on the

first day of the month in which he has attained the age of 70, or

"(B) in or after the month in which he attains the age of 70, the coverage period shall begin on the first day of the month following the month in which he so enrolls; or

"(2) subparagraph (B) of section 1395p(l)(3) of this title—

"(A) in the first month of the special enrollment period, the coverage period shall begin on the first day of such month, or

"(B) in a month after the first month of the special enrollment period, the coverage period shall begin on the first day of the month following the month in which he so enrolls."

1984—Subsec. (e). Pub. L. 98-369, § 2338(c), added subsec. (e).

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 9344(b)(2) of Pub. L. 99-509 provided that: "The amendments made by paragraph (1) [amending this section] shall apply to notices filed on or after July 1, 1987."

Amendment by Pub. L. 99-272 effective May 1, 1986, see section 9201(d)(2) of Pub. L. 99-272, set out as a note under section 1395p of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

For effective date of amendment by Pub. L. 98-369, see section 2338(d)(2) of Pub. L. 98-369, set out as a note under section 1395p of this title.

§ 1395r. Amount of premiums for individuals enrolled under this part

(a) Determination of monthly actuarial rates and premiums

(1) The Secretary shall, during September of 1983 and of each year thereafter, determine the monthly actuarial rate for enrollees age 65 and over which shall be applicable for the succeeding calendar year. Such actuarial rate shall be the amount the Secretary estimates to be necessary so that the aggregate amount for such calendar year with respect to those enrollees age 65 and older will equal one-half of the total of the benefits and administrative costs which he estimates will be payable from the Federal Supplementary Medical Insurance Trust Fund for services performed and related administrative costs incurred in such calendar year with respect to such enrollees. In calculating the monthly actuarial rate, the Secretary shall include an appropriate amount for a contingency margin.

(2) The monthly premium of each individual enrolled under this part for each month after December 1983 shall, except as provided in subsections (b) and (e) of this section, be the amount determined under paragraph (3).

(3) The Secretary shall, during September of 1983 and of each year thereafter, determine and promulgate the monthly premium applicable for individuals enrolled under this part for the succeeding calendar year. The monthly premium shall (except as otherwise provided in subsection (e) of this section) be equal to the smaller of—

(A) the monthly actuarial rate for enrollees age 65 and over, determined according to paragraph (1) of this subsection, for that calendar year, or

(B) the monthly premium rate most recently promulgated by the Secretary under this paragraph, increased by a percentage determined as follows: The Secretary shall ascertain the primary insurance amount computed under section 415(a)(1) of this title, based upon average indexed monthly earnings of $900, that applied to individuals who became eligible for and entitled to old-age insurance benefits on November 1 of the year before the year of the promulgation. He shall increase the monthly premium rate by the same percentage by which that primary insurance amount is increased when, by reason of the law in effect at the time the promulgation is made, it is so computed to apply to those individuals for the following November 1.

Whenever the Secretary promulgates the dollar amount which shall be applicable as the monthly premium for any period, he shall, at the time such promulgation is announced, issue a public statement setting forth the actuarial assumptions and bases employed by him in arriving at the amount of an adequate actuarial rate for enrollees age 65 and older as provided in paragraph (1) and the derivation of the dollar amounts specified in this paragraph.

(4) The Secretary shall also, during September of 1983 and of each year thereafter, determine the monthly actuarial rate for disabled enrollees under age 65 which shall be applicable for the succeeding calendar year. Such actuarial rate shall be the amount the Secretary estimates to be necessary so that the aggregate amount for such calendar year with respect to disabled enrollees under age 65 which will equal one-half of the total of the benefits and administrative costs which he estimates will be payable from the Federal Supplementary Medical Insurance Trust Fund for services performed and related administrative costs incurred in such calendar year with respect to such enrollees. In calculating the monthly actuarial rate under this paragraph, the Secretary shall include an appropriate amount for a contingency margin.

(h) Increase in monthly premiums

In the case of an individual whose coverage period began pursuant to an enrollment after his initial enrollment period (determined pursuant to subsection (c) or (d) of section 1395p of this title), the monthly premium determined under subsection (a) or (e) of this section shall be increased by 10 percent of the monthly premium so determined for each full 12 months (in the same continuous period of eligibility) in which he could have been but was not enrolled. For purposes of the preceding sentence, there shall be taken into account (1) the months which elapsed between the close of his initial enrollment period and the close of the enrollment period in which he enrolled, plus (in the case of an individual who reenrolls) (2) the months which elapsed between the date of termination of a previous coverage period and the close of the enrollment period in which he reenrolled, but there shall not be taken into account months during which the individual has attained the age of 65 and for which the individual can demonstrate that the individual was enrolled in a group health plan described in sec-

tion 1395y(b)(3)(A)(iv) of this title by reason of the individual's (or the individual's spouse's) current employment or months during which the individual has not attained the age of 65 and for which the individual can demonstrate that the individual was enrolled in a large group health plan as an active individual (as those terms are defined in section 1395y(b)(4)(B) of this title). Any increase in an individual's monthly premium under the first sentence of this subsection with respect to a particular continuous period of eligibility shall not be applicable with respect to any other continuous period of eligibility which such individual may have.

(c) Premiums rounded to the nearest multiple of ten cents

If any monthly premium determined under the foregoing provisions of this section is not a multiple of 10 cents, such premium shall be rounded to the nearest multiple of 10 cents.

(d) "Continuous period of eligibility" defined

For purposes of subsection (b) of this section (and section 1395p(g)(1) of this title), an individual's "continuous period of eligibility" is the period beginning with the first day on which he is eligible to enroll under section 1395o of this title and ending with his death; except that any period during all of which an individual satisfied paragraph (1) of section 1395o of this title and which terminated in or before the month preceding the month in which he attained age 65 shall be a separate "continuous period of eligibility" with respect to such individual (and each such period which terminates shall be deemed not to have existed for purposes of subsequently applying this section).

(e) Monthly premium for individuals enrolled for each month after December 1983 and prior to January 1989

(1) Notwithstanding the provisions of subsection (a) of this section, the monthly premium for each individual enrolled under this part for each month after December 1983 and prior to January 1989 shall be an amount equal to 50 percent of the monthly actuarial rate for enrollees age 65 and over, as determined under subsection (a)(1) of this section and applicable to such month.

(2) Any increases in premium amounts taking effect prior to January 1989 by reason of paragraph (1) shall be taken into account for purposes of determining increases thereafter under subsection (a)(3) of this section.

(f) Monthly premiums for individuals enrolled for each month in 1986 and 1987; conditions

(1) If no cost-of-living increase becomes effective under section 415(i) of this title in December of 1985, 1986, or 1987, the monthly premium of each individual enrolled under this part for each month in the succeeding year shall (except as otherwise provided in subsection (b) of this section) be the same as the monthly premium (disregarding subsection (b) of this section) of the individual for such December.

(2) If paragraph (1) does not apply to the monthly premiums for 1986, 1987, or 1988, if an individual is entitled to monthly benefits under section 402 or 423 of this title for November and for December in the preceding year, and if the monthly premium for that December and for the following January is deducted from those benefits under section 1395s(a)(1) of this title, the monthly premium for that individual for that January and for each of the succeeding 11 months for which he is entitled to benefits under section 402 or 423 of this title shall (except as otherwise provided in subsection (b) of this section) be the greater of—

(A) the monthly premium amount determined under subsection (a)(2) of this section for that January reduced by the amount (if any) by which the monthly benefit under section 402 or 423 of this title for that November, after the deduction of the premium (disregarding subsection (b) of this section) for that individual for that December and after rounding under section 415(g) of this title, would exceed the monthly benefit under section 402 or 423 of this title for that December, after the deduction of the monthly premium amount determined under subsection (a)(2) of this section (disregarding subsection (b) of this section) for that individual for that January and after rounding under section 415(g) of this title, or

(B) the monthly premium (disregarding subsection (b) of this section) for that individual for that December.

For purposes of this subsection, retroactive adjustments or payments and deductions on account of work shall not be taken into account in determining the monthly benefits to which an individual is entitled under section 402 or 423 of this title.

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, § 606(a)(1)-(3)(C), 97 Stat. 169, 170; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2302(a), (b), 2338(a), 98 Stat. 1063, 1091; Nov. 8, 1984, Pub. L. 98-617, § 3(b)(4), 98 Stat. 3295; Apr. 7, 1986, Pub. L. 99-272, title IX, §§ 9219(a)(1), 9313, 100 Stat. 182, 194; Oct. 21, 1986, Pub. L. 99-509, title IX, §§ 9001(c), 9319(c)(4), 100 Stat. 1970, 2012.)

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-509, § 9319(c)(4), inserted "or months during which the individual has not attained the age of 65 and for which the individual can demonstrate that the individual was enrolled in a large group health plan as an active individual (as those terms are defined in section 1395y(b)(4)(B) of this title)" at end of second sentence.

Pub. L. 99-272, § 9219(a)(1), substituted "months during which the individual has attained the age of 65 and for which the individual can demonstrate that the individual was enrolled in a group health plan described in section 1395y(b)(3)(A)(iv) of this title" for "months in which the individual has met the conditions specified in clauses (i) and (iii) of section 1395y(b)(3)(A) of this title and can demonstrate that the individual was enrolled in a group health plan described in clause (iv) of such section".

Subsec. (e). Pub. L. 99-272, § 9313(1), substituted "1989" for "1988" wherever appearing.

Subsec. (f)(1). Pub. L. 99-272, § 9313(2), substituted ", 1986, or 1987" for "or 1986".

Subsec. (f)(2). Pub. L. 99-272, § 9313(3), substituted ", 1987, or 1988" for "or 1987".

Subsec. (f)(2)(A). Pub. L. 99-509, § 9001(c), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "the monthly premium amount determined under subsection (a)(2) of this section for that January reduced by the amount (if any) necessary to make the monthly benefits under section 402 or 423 of this title for that December after the deduction of the monthly premium (disregarding subsection (b) of this section) for that January at least equal to the monthly benefits under section 402 or 423 of this title for the preceding November after the deduction of the premium (disregarding subsection (b) of this section) for that individual for that December, or".

1984—Subsec. (b). Pub. L. 98-369, § 2338(a), inserted provision that there shall not be taken into account months in which the individual has met the conditions specified in clauses (I) and (iii) of section 1395y(b)(3)(A) of this title and can demonstrate that the individual was enrolled in a group health plan described in clause (iv) of such section by reason of the individual's (or the individual's spouse's) current employment.

Subsec. (e). Pub. L. 98-369, § 2302(a), substituted "1988" for "1986" in pars. (1) and (2).

Subsec. (f). Pub. L. 98-369, § 2302(b), added subsec. (f).

Subsec. (f)(2)(A). Pub. L. 98-817, § 3(b)(4), substituted "for that December after the deduction" for "for that January after the deduction" and "for that December" for "for that November".

1983—Subsec. (a). Pub. L. 98-21, § 606(a)(1), added subsec. (a) and struck out former subsec. (a) which provided that the monthly premium of each individual enrolled under this part for each month before 1968 would be $3.

Subsec. (b). Pub. L. 98-21, § 606(a)(3)(A), substituted "subsection (a) or (e)" for "subsection (b), (c), or (g)".

Pub. L. 98-21, § 600(a)(1), (2), redesignated subsec. (d) as (b), and struck out former subsec. (b) which provided for the determination by the Secretary of the monthly premium for each individual enrolled under this part for each month after 1967 and before July 1, 1973.

Subsec. (c). Pub. L. 98-21, § 606(a)(1), (2), redesignated subsec. (e) as (c), and struck out former subsec. (c) which directed the Secretary to determine during December of each year after 1972 the monthly actuarial rate for enrollees age 65 and over applicable to the succeeding fiscal year (beginning July 1), provided for his determination of the monthly premium for such period, and directed him to determine the monthly actuarial rate for disabled enrollees under age 65.

Subsec. (d). Pub. L. 98-21, § 606(a)(3)(B), which directed that "purposes of subsection (b)" be substituted for "purposes of subsection (c)" was executed by substituting "purposes of subsection (b)" for "purposes of subsection (d)", as the probable intent of Congress in view of previous substitution of "subsection (d)" for "subsection (c)" by Pub. L. 92-603, § 203(d)(2).

Pub. L. 98-21, § 606(a)(2), redesignated subsec. (f) as (d). Former subsec. (d) redesignated (b).

Subsec. (e). Pub. L. 98-21, § 606(a)(2), redesignated subsec. (g) as (e). Former subsec. (e) redesignated (c).

Subsec. (e)(1). Pub. L. 98-21, § 606(a)(3)(C), substituted "(a)" for "(c)", "(a)(1)" for "(c)(1)", "December 1983" for "June 1983", and "January 1988" for "July 1985".

Subsec. (e)(2). Pub. L. 98-21, § 606(a)(3)(C)(i), (iii), substituted "(a)(3)" for "(c)(3)" and "January 1986" for "July 1985".

Subsecs. (f), (g). Pub. L. 98-21, § 606(a)(2), redesignated subsecs. (f) and (g) as (d) and (e), respectively.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 9001(c) of Pub. L. 99-509 applicable with respect to monthly premiums under this section for months after December 1986, see section 9001(d)(3) of Pub. L. 99-509, set out as a note under section 415 of this title.

Amendment by section 9319(c)(4) of Pub. L. 99-509 applicable to enrollments occurring on or after Jan. 1, 1987, see section 9319(f)(2) of Pub. L. 99-509 set out as a note under section 1395y of this title.

Section 9219(a)(3)(A) of Pub. L. 99-272 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to months beginning with January 1983 for premiums for months beginning with the first month that begins more than 30 days after the date of the enactment of this Act [Apr. 7, 1986]."

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98-369, see section 3(c) of Pub. L. 98-617, set out as a note under section 1395f of this title.

Section 2302(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this section] shall apply to premiums for months beginning with Janaury 1986."

Section 2338(d)(1) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending subsec. (b) of this section] shall apply to months beginning with January 1983 for premiums for months beginning with the first month which begins more than 30 days after the date of the enactment of this Act [July 18, 1984]."

EFFECTIVE DATE OF 1983 AMENDMENTS; TRANSITIONAL RULE

Section 606(c) of Pub. L. 98-21 provided that: "The amendments made by this section [amending sections 1395i-2, 1395r, 1395v, 1395w, and 1395mm of this title] shall apply to premiums for months beginning with January 1084, and for months after June 1983 and before January 1984—

"(1) the monthly premiums under part A and under part B of title XVIII of the Social Security Act [42 U.S.C. 1395c et seq., 1395j et seq.] for individuals enrolled under each respective part shall be the monthly premium under that part for the month of June 1983, and

"(2) the amount of the Government contributions under section 1844(a)(1) of such Act [42 U.S.C. 1395w(a)(1)] shall be computed on the basis of the actuarially adequate rate which would have been in effect under part B of title XVIII of such Act for such months without regard to the amendments made by this section, but using the amount of the premium in effect for the month of June 1983."

§ 1395s. Payment of premiums

(a) Deductions from section 402 or 423 monthly benefits

[*See main edition for text of (1)*]

(2) The Secretary of the Treasury shall, from time to time, transfer from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates from benefits under section 402 or 423 of this title which are payable from such Trust Fund. Such transfer shall be made on the basis of a certification by the Secretary of Health and Human Services and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

[*See main edition for text of (b) and (c)*]

(d) Deductions from civil service retirement annuities

(1) In the case of an individual receiving an annuity under subchapter III of chapter 83 of

title 5 or any other law administered by the Director of the Office of Personnel Management providing retirement or survivorship protection, to whom neither subsection (a) nor subsection (h) of this section applies, his monthly premiums under this part (and the monthly premiums of the spouse of such individual under this part if neither subsection (a) nor subsection (b) of this section applies to such spouse and if such individual agrees) shall, upon notice from the Secretary of Health and Human Services to the Director of the Office of Personnel Management, be collected by deducting the amount thereof from each installment of such annuity. Such deduction shall be made in such manner and at such times as the Director of the Office of Personnel Management may determine. The Director of the Office of Personnel Management shall furnish such information as the Secretary of Health and Human Services may reasonably request in order to carry out his functions under this part with respect to individuals to whom this subsection applies. A plan described in section 8903 or 8903a of title 5 may reimburse each annuitant enrolled in such plan an amount equal to the premiums paid by him under this part if such reimbursement is paid entirely from funds of such plan which are derived from sources other than the contributions described in section 8906 of such title.

(2) The Secretary of the Treasury shall, from time to time, but not less often than quarterly, transfer from the Civil Service Retirement and Disability Fund, or the account (if any) applicable in the case of such other law administered by the Director of the Office of Personnel Management, to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates. Such transfer shall be made on the basis of a certification by the Director of the Office of Personnel Management and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

[*See main edition for text of (e) to (h)*]

(Aug. 14, 1935, ch. 531, title XVIII, § 1840, as added July 30, 1965, Pub. L. 89-97, title I, § 102(a), 79 Stat. 306, and amended Apr. 8, 1966, Pub. L. 89-364, § 4(c), 80 Stat. 106; Jan. 2, 1968, Pub. L. 90-248, title I, § 166, title IV, § 403(g), 81 Stat. 874, 932; Oct. 30, 1972, Pub. L. 92-603, title II, §§ 201(c)(6), 263(a)-(d)(3), 86 Stat. 1373, 1448, 1449; Oct. 16, 1974, Pub. L. 93-445, title III, § 306, 88 Stat. 1358; July 18, 1984, Pub. L. 98-369, div. B, title III, § 2354(b)(11), title VI, § 2663(j)(2)(F)(ii), 98 Stat. 1101, 1170; June 17, 1985, Pub. L. 99-53, § 2(g), 99 Stat. 94.)

AMENDMENTS

1985—Subsec. (d)(1). Pub. L. 99-53 inserted reference to section 8903a of title 5.

1984—Subsec. (a)(2). Pub. L. 98-369, § 2663(j)(2)(F)(ii), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (d)(1). Pub. L. 98-369, § 2354(b)(11), substituted "Director of the Office of Personnel Management" for "Civil Service Commission".

Pub. L. 98-369, § 2663(j)(2)(F)(ii), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (d)(2). Pub. L. 98-389, § 2354(b)(11), substituted "Director of the Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2354(b)(11) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 415, 428, 1395i-2, 1395r, 1395t of this title.

§ 1395t. Federal Supplementary Medical Insurance Trust Fund

[*See main edition for text of (a)*]

(b) Board of Trustees; composition; meetings; duties

With respect to the Trust Fund, there is hereby created a body to be known as the Board of Trustees of the Trust Fund (hereinafter in this section referred to as the "Board of Trustees") composed of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this section referred to as the "Managing Trustee"). The Administrator of the Health Care Financing Administration shall serve as the Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

[*See main edition for text of (1) to (4)*]

The report provided for in paragraph (2) shall include a statement of the assets of, and the disbursements made from, the Trust Fund during the preceding fiscal year, an estimate of the expected income to, and disbursements to be made from, the Trust Fund during the current fiscal year and each of the next 2 fiscal years, and a statement of the actuarial status of the Trust Fund. Such report shall also include an actuarial opinion by the Chief Actuarial Officer of the Health Care Financing Administration certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable. Such report shall be printed as a House document of the session of the Congress to which the report is made. A person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for ac-

tions taken in such capacity with respect to the Trust Fund.

(c) Investment of Trust Fund by Managing Trustee

It shall be the duty of the Managing Trustee to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Fund. Such obligations issued for purchase by the Trust Fund shall have maturities fixed with due regard for the needs of the Trust Fund and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

[*See main edition for text of (d) and (e)*]

(f) Transfers to other Funds

There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Federal Old-Age and Survivors Insurance Trust Fund and from the Federal Disability Insurance Trust Fund amounts equivalent to the amounts not previously so transferred which the Secretary of Health and Human Services shall have certified as overpayments (other than amounts so certified to the Railroad Retirement Board) pursuant to section 1395gg(b) of this title. There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Railroad Retirement Account amounts equivalent to the amounts not previously so transferred which the Secretary of Health and Human Services shall have certified as overpayments to the Railroad Retirement Board pursuant to section 1395gg(b) of this title.

(g) Payments from Trust Fund of amounts provided for by this part or with respect to administrative expenses

The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health and Human Services certifies are necessary to make the payments provided for by this part, and the payments with respect to administrative expenses in accordance with section 401(g)(I) of this title.

(b) Payments from Trust Fund of costs incurred by Director of the Office of Personnel Management

The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health and Human Services certifies are necessary to pay the costs incurred by the Director of the Office of Personnel Management in making deductions pursuant to section 1395s(d) of this title. During each fiscal year, or after the close of such fiscal year, the Director of the Office of Personnel Management shall certify to the Secretary the amount of the costs the Director incurred in making such deductions, and such certified amount shall be the basis for the amount of such costs certified by the Secretary to the Managing Trustee.

(i) Payments from Trust Fund of costs incurred by Railroad Retirement Board

The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health and Human Services certifies are necessary to pay the costs incurred by the Railroad Retirement Board for services performed pursuant to section 1395s(b)(1) and section 1395u(g) of this title. During each fiscal year or after the close of such fiscal year, the Railroad Retirement Board shall certify to the Secretary the amount of the costs it incurred in performing such services and such certified amount shall be the basis for the amount of such costs certified by the Secretary te the Managing Trustee.

(Aug. 14, 1935, ch. 531, title XVIII, § 1841, as added July 30, 1965, Pub. L. 89-97, title I, § 102(a), 79 Stat. 308, and amended Jan. 2, 1968, Pub. L. 90-248, title I, § 169(a), 81 Stat. 875; Oct. 30, 1972, Pub. L. 92-603, title I, § I32(e), title II, § 263(d)(4), (e), 86 Stat. 1361, 1449; June 13, 1978, Pub. L. 95-292, § 5, 92 Stat. 315; Apr. 20, 1983, Pub. L. 98-21, title I, § 154(c), title III, § 341(c), 97 Stat. 107, 135; July 18, 1984, Pub. L. 98-369, div. B, title III, § 2354(b)(2), (11), (12), title VI, § 2663(j)(2)(F)(iii), 98 Stat. 1100, 1101, 1170; Apr. 7, 1986, Pub. L. 99-272, title IX, § 9213(b), 100 Stat. 180.)

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-272 struck out provision at end of penultimate sentence that the certification shall not refer to economic assumptions underlying Trustee's report.

1984—Subsec. (c). Pub. L. 98-369, § 2354(b)(2), substituted "under chapter 31 of title 31" for "under the Second Liberty Bond Act, as amended".

Subsecs. (f), (g). Pub. L. 98-369, § 2663(j)(2)(F)(iii), substituted "Health and Human Services" for "Health, Education, and Welfare" wherever appearing.

Subsec. (h). Pub. L. 98-369, § 2663(j)(2)(F)(iii), substituted "Health and Human Services" for "Health, Education, and Welfare".

Pub. L. 98-369, § 2354(b)(11), substituted "Director of the Office of Personnel Management" for "Civil Service Commission" in two places.

Pub. L. 98-369, § 2354(b)(12), substituted "the Director" for "it".

Subsec. (i). Pub. L. 98-369, § 2663(j)(2)(F)(iii), substituted "Health and Human Services" for "Health, Education, and Welfare".

1983—Subsec. (b). Pub. L. 98-21, § 341(c)(1), substituted "Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate" for "Secretary of Health, Education, and Welfare, all ex officio" in provisions preceding par. (1).

Pub. L. 98-21, § 154(c), inserted at end provision that the report referred to in par. (2) shall also include an actuarial opinion by the Chief Actuarial Officer of the Health Care Financing Administration certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable, and provided further that the certification shall not refer to economic assumptions underlying the Trustee's report.

Pub. L. 98-21, § 341(c)(2), inserted at end provision that a person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Fund.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2354(b)(11), 12), of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 154(c) of Pub. L. 98-21 effective Apr. 20, 1983, see section 154(e) of Pub. L. 98-21, set out as a note under section 401 of this title.

Amendment by section 341(c) of Pub. L. 98-21 effective Apr. 20, 1983, see section 341(d) of Pub. L. 98-21, set out as a note under section 401 of this title.

DUE DATE FOR 1983 REPORT ON OPERATION AND STATUS OF TRUST FUND

Notwithstanding subsec. (b)(2) of this section, the annual report of the Board of Trustees of the Trust Fund required for calendar year 1983 under this section may be filed at any time not later than forty-five days after Apr. 20, 1983, see section 154(d) of Pub. L. 98-21, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 910, 1320a-7a, 1395b-1, 1395gg, 1395vv, 1396m of this title.

§ 1395u. Use of carriers for administration of benefits

[See main edition for text of (a)]

(b) Applicability of competitive bidding provisions; findings as to financial responsibility, etc., of carrier; contractual duties imposed by contract

[See main edition for text of (1)]

(2) No such contract shall be entered into with any carrier unless the Secretary finds that such carrier will perform its obligations under the contract efficiently and effectively and will meet such requirements as to financial responsibility, legal authority, and other matters as he finds pertinent. The Secretary shall publish in the Federal Register standards and criteria for the efficient and effective performance of contract obligations under this section, and opportunity shall be provided for public comment prior to implementation.

(3) Each such contract shall provide that the carrier—

[See main edition for text of (A)]

(B) will take such action as may be necessary to assure that, where payment under this part for a service is on a charge basis, such charge will be reasonable and not higher than the charge applicable, for a comparable service and under comparable circumstances, to the policyholders and subscribers of the carrier, and such payment will (except as otherwise provided in section 1395gg(f) of this title) be made—

(i) on the basis of an itemized bill; or

(ii) on the basis of an assignment under the terms of which (I) the reasonable charge is the full charge for the service and (II) the physician or other person furnishing such service agrees not to charge for such service if payment may not be made therefor by reason of the provisions of paragraph (1) of section 1395y(a) of this title, and if the individual to whom such service was furnished was without fault in incurring the expenses of such service, and if the Secretary's determination that payment (pursuant to such assignment) was incorrect and was made subsequent to the third year following the year in which notice of such payment was sent to such individual; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this subchapter (except in the case of physicians' services and ambulance service furnished as described in section 1395y(a)(4) of this title, other than for purposes of section 1395gg(f) of this title);

but (in the case of bills submitted, or requests for payment made, after March 1968) only if the bill is submitted, or a written request for payment is made in such other form as may be permitted under regulations, no later than the close of the calendar year following the year in which such service is furnished (deeming any service furnished in the last 3 months of any calendar year to have been furnished in the succeeding calendar year);

(C) will establish and maintain procedures pursuant to which an individual enrolled under this part will be granted an opportunity for a fair hearing by the carrier, in any case where the amount in controversy is at least $100, but not more than $500, when requests for payment under this part with respect to services furnished him are denied or are not acted upon with reasonable promptness or when the amount of such payment is in controversy;

(D) will furnish to the Secretary such timely information and reports as he may find necessary in performing his functions under this part;

(E) will maintain such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of the information and reports under subparagraph (D) and otherwise to carry out the purposes of this part;

(F) will take such action as may be necessary to assure that where payment under this part for a service rendered is on a charge basis, such payment shall be determined on the basis of the charge that is determined in accordance with this section on the basis of customary and prevailing charge levels in effect at the time the service was rendered or, in the case of services rendered more than 12 months before the year in which the bill is submitted or request for payment is made, on the basis of such levels in effect for the 12-month period preceding such year;

(G) will provide to each nonparticipating physician, at the beginning of each year, a list of the physician's maximum allowable actual charges (established under subsection (j)(1)(C) of this section) for the year for the physicians' services mostly [4] commonly furnished by that physician; and

(H) if it makes determinations or payments with respect to physicians' services, will implement—

(i) programs to recruit and retain physicians as participating physicians in the area served by the carrier, including educational and outreach activities and the use of professional relations personnel to handle billing and other problems relating to payment of claims of participating physicians; and

(ii) programs to familiarize beneficiaries with the participating physician program and to assist such beneficiaries in locating participating physicians;

and shall contain such other terms and conditions not inconsistent with this section as the Secretary may find necessary or appropriate. In determining the reasonable charge for services for purposes of this paragraph, there shall be taken into consideration the customary charges for similar services generally made by the physician or other person furnishing such services, as well as the prevailing charges in the locality for similar services. No charge may be determined to be reasonable in the case of bills submitted or requests for payment made under this part after December 31, 1970, if it exceeds the higher of (i) the prevailing charge recognized by the carrier and found acceptable by the Secretary for similar services in the same locality in administering this part on December 31, 1970, or (ii) the prevailing charge level that, on the basis of statistical data and methodology acceptable to the Secretary, would cover 75 percent of the customary charges made for similar services in the same locality during the 12-month period ending on the June 30 last preceding the start of the calendar year in which the service is rendered. In the case of physician services the prevailing charge level determined for purposes of clause (ii) of the preceding sentence for any twelve-month period (beginning after June 30, 1973) specified in clause (ii) of such sentence may not exceed (in the aggregate) the level determined under such clause for the fiscal year ending June 30, 1973, or (with respect to physicians [5] services furnished in a year after 1987) the level determined under this sentence for the previous year except to the extent that the Secretary finds, on the basis of appropriate economic index data, that such higher level is justified by year-to-year economic changes. With respect to power-operated wheelchairs for which payment may be made in accordance with section 1395x(s)(6) of this title, charges determined to be reasonable may not exceed the lowest charge at which power-operated wheelchairs are available in the locality. In the case of medical services, supplies, and equipment (including equipment servicing) that, in the judgment of the Secretary, do not generally vary significantly in quality from one supplier to another, the charges incurred after December 31, 1972, determined to be reasonable may not exceed the lowest charge levels at which such services, supplies, and equipment are widely and consistently available in a locality except to the extent and under the circumstances specified by the Secretary. The requirement in subparagraph (B) that a bill be submitted or request for payment be made by the close of the following calendar year shall not apply if (I) failure to submit the bill or request the payment by the close of such year is due to the error or misrepresentation of an officer, employee, fiscal intermediary, carrier, or agent of the Department of Health and Human Services performing functions under this subchapter and acting within the scope of his or its authority, and (II) the bill is submitted or the payment is requested promptly after such error or misrepresentation is eliminated or corrected. Notwithstanding the provisions of the third and fourth sentences preceding this sentence, the prevailing charge level in the case of a physician service in a particular locality determined pursuant to such third and fourth sentences for any calendar year after 1974 shall, if lower than the prevailing charge level for the fiscal year ending June 30, 1975, in the case of a similar physician service in the same locality by reason of the application of economic index data, be raised to such prevailing charge level for the fiscal year ending June 30, 1975. The amount of any charges for outpatient services which shall be considered reasonable shall be subject to the limitations established by regulations issued by the Secretary pursuant to section 1395x(v)(1)(K) of this title, and in determining the reasonable charge for such services, the Secretary may limit such reasonable charge to a percentage of the amount of the prevailing charge for similar services furnished in a physician's office, taking into account the extent to which overhead costs associated with

[4] So in original. Probably should be "most".

[5] So in original. Probably should be "physicians' ".

such outpatient services have been included in the reasonable cost or charge of the facility.

(4)(A)(i) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the 15-month period beginning July 1, 1984, the Secretary shall not set any level higher than the same level as was set for the 12-month period beginning July 1, 1983.

(ii)(I) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the 8-month period beginning May 1, 1986, by a physician who is not a participating physician (as defined in subsection (h)(1) of this section) at the time of furnishing the services, the Secretary shall not set any level higher than the same level as was set for the 12-month period beginning July 1, 1983.

(II) In determining the prevailing charge levels under the fourth sentence of paragraph (3) for physicians' services furnished during the 8-month period beginning May 1, 1986, by a physician who is a participating physician (as defined in subsection (h)(1) of this section) at the time of furnishing the services, the Secretary shall permit an additional one percentage point increase in the increase otherwise permitted under that sentence.

(iii) In determining the maximum allowable prevailing charges which may be recognized consistent with the index described in the fourth sentence of paragraph (3) for physicians' services furnished on or after January 1, 1987, by participating physicians, the Secretary shall treat the maximum allowable prevailing charges recognized as of December 31, 1986, under such sentence with respect to participating physicians as having been justified by economic changes.

(iv) In determining the prevailing charge level under the third and fourth sentences of paragraph (3) for a physicians' service furnished on or after January 1, 1987, by a nonparticipating physician, the Secretary shall set the level at 96 percent of the prevailing charge levels established under such sentences with respect to such service furnished by participating physicians.

(v) Beginning with 1987, the percentage increase in the MEI (as defined in subparagraph (E)(ii)) for each year shall be the same for nonparticipating physicians as for participating physicians.

(B)(i) In determining the reasonable charge under paragraph (3) for physicians' services furnished during the 15-month period beginning July 1, 1984, the customary charges shall be the same customary charges as were recognized under this section for the 12-month period beginning July 1, 1983.

(ii) In determining the reasonable charge under paragraph (3) for physicians' services furnished during the 8-month period beginning May 1, 1986, by a physician who is not a participating physician (as defined in subsection (h)(1) of this section) at the time of furnishing the services—

(I) if the physician was not a participating physician at any time during the 12-month period beginning on October 1, 1984, the customary charges shall be the same customary charges as were recognized under this section for the 12-month period beginning July 1, 1983, and

(II) if the physician was a participating physician at any time during the 12-month period beginning on October 1, 1984, the physician's customary charges shall be determined based upon the physician's actual charges billed during the 12-month period ending on March 31, 1985.

(C) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during periods beginning after September 30, 1985, the Secretary shall treat the level as set under subparagraph (A)(i) as having fully provided for the economic changes which would have been taken into account but for the limitations contained in subparagraph (A)(i).

(D)(i) In determining the customary charges for physicians' services furnished during the 8-month period beginning May 1, 1986, or the 12-month period beginning January 1, 1987, by a physician who was not a participating physician (as defined in subsection (h)(1) of this section) on September 30, 1985, the Secretary shall not recognize increases in actual charges for services furnished during the 15-month period beginning on July 1, 1984, above the level of the physician's actual charges billed in the 3-month period ending on June 30, 1984.

(ii) In determining the customary charges for physicians' services furnished during the 12-month period beginning January 1, 1987, by a physician who is not a participating physician (as defined in subsection (h)(1) of this section) on April 30, 1986, the Secretary shall not recognize increases in actual charges for services furnished during the 7-month period beginning on October 1, 1985, above the level of the physician's actual charges billed during the 3-month period ending on June 30, 1984.

(iii) In determining the customary charges for physicians' services furnished during the 12-month period beginning January 1, 1987, or January 1, 1988, by a physician who is not a participating physician (as defined in subsection (h)(1) of this section) on December 31, 1986, the Secretary shall not recognize increases in actual charges for services furnished during the 8-month period beginning on May 1, 1986, above the level of the physician's actual charges billed during the 3-month period ending on June 30, 1984.

(iv) In determining the customary charges for a physicians' service furnished on or after January 1, 1988, if a physician was a nonparticipating physician in a previous year (beginning with 1987), the Secretary shall not recognize any amount of such actual charges (for that service furnished during such previous year) that exceeds the maximum allowable actual charge for such service established under subsection (j)(1)(C) of this section.

(E) In this section:

(i) The term "participating physician" refers, with respect to the furnishing of services, to a physician who at the time of furnishing the services is a participating physi-

cian (under subsection (h)(1) of this section), and the term "nonparticipating physician" refers, with respect to the furnishing of services, a [*] physician who at the time of furnishing the services is not a participating physician.

(ii) The term "percentage increase in the MEI" means, with respect to physicians' services furnished in a year, the percentage increase in the medicare economic index (referred to in the fourth sentence of paragraph (3)) applicable to such services furnished as of the first day of that year.

(5) Each contract under this section shall be for a term of at least one year, and may be made automatically renewable from term to term in the absence of notice by either party of intention to terminate at the end of the current term; except that the Secretary may terminate any sueh contract at any time (after such reasonable notice and opportunity for hearing to the carrier invoived as he may provide in regulations) if he finds that the carrier has falied substantially to carry out the contract or is carrying out the contract in a manner inconsistent with the efficient and effective administration of the insurance program established by this part.

(6) No payment under this part for a service provided to any individual shall (except as provided in section 1395gg of this title) be made to anyone other than such individual or (pursuant to an assignment described in subparagraph (B)(ii) of paragraph (3)) the physician or other person who provided the service, except that (A) payment may be made (i) to the employer of such physician or other person if such physician or other person is required as a condition of his employment to turn over his fee for such service to his employer, or (ii) (where the service was provided in a hospital, clinic, or other facility) to the facility in which the service was provided if there is a contractual arrangement between such physician or other person and such facility under which such facility submits the bill for such service, (B) payment may be made to an entity (i) which provides coverage of the services under a health benefits plan, but only to the extent that payment is not made under this part, (ii) which has paid the person who provided the service an amount (including the amount payable under this part) which that person has accepted as payment in full for the service, and (iii) to which the individual has agreed in writing that payment may be made under this part, and (C) in the case of services described in section 1395x(s)(2)(K) of this title payment shall be made to the employer of the physician assistant involved. No payment which under the preceding sentence may be made directly to the physician or other person providing the service involved (pursuant to an assigument described in subparagraph (B)(ii) of paragraph (3)) shall be made to anyone else under a reassignment or power of attorney (except to an employer or facility as described in clause (A) of such sentence); but nothing in this subsection shall be construed (i) to prevent the making of such a payment in accordance with an assignment from the individual to whom the service was provided or a reassignment from the physician or other person providing such service if such assignment or reassignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction, or (ii) to preclude an agent of the physician or other person providing the service from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which the compensation to be paid to the agent for his services for or in connection with the billing or collection of payments due such physician or other person nnder this subchapter is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment.

(7)(A) In the case of physicians' services furnished to a patient in a hospital with a teaching program approved as specified in section 1395x(b)(6) of this title but which does not meet the conditions described in section 1395x(b)(7) of this title, the carrier shall not provide (except on the basis described in subparagraph (C)) for payment for such services under this part—

(i) unless—

(I) the physician renders sufficient personal and identifiable physicians' services to the patient to exercise full, personal control over the management of the portion of the case for which the payment is sought,

(II) the services are of the same character as the services the physician furnishes to patients not entitled to benefits under this subchapter, and

(III) at least 25 percent of the hospital's patients (during a representative past period, as determined by the Secretary) who were not entitled to benefits under this subchapter and who were furnished services described in subclauses (I) and (II) paid all or a substantial part of charges (other than nominal charges) imposed for such services; and

(ii) to the extent that the payment is based upon a reasonable charge for the services in excess of the customary charge as determined in accordance with subparagraph (B).

(B) The customary charge for such services in a hospital shall be determined in accordance with regulations issued by the Secretary and taking into account the following factors:

(i) In the case of a physician who is not a teaching physician (as defined by the Secretary), the carrier shall take into account the amounts the physician charges for similar services in the physician's practice outside the teaching setting.

(ii) In the case of a teaching physician, if the hospital, its physicians, or other appropriate billing entity has established one or more schedules of charges which are collected for medical and surgical services, the carrier shall base payment under this subchapter on the greatest of—

[*] So in original. Probably should be "to a".

(I) the charges (other than nominal charges) which are most frequently collected in full or substantial part with respect to patients who were not entitled to benefits under this subchapter and who were furnished services described in subclauses (I) and (II) of subparagraph (A)(i),

(II) the mean of the charges (other than nominal charges) which were collected in full or substantial part with respect to such patients, or

(III) 85 percent of the prevailing charges paid for similar services in the same locality.

(iii) If all the teaching physicians in a hospital agree to have payment made for all of their physicians' services under this part furnished to patients in such hospital on the basis of an assignment described in paragraph (3)(B)(ii) or under the procedure described in section 1395gg(f)(1) of this title, the customary charge for such services shall be equal to 90 percent of the prevailing charges paid for similar services in the same locality.

(C) In the case of physicians' services furnished to a patient in a hospital with a teaching program approved as specified in section 1395x(b)(6) of this title but which does not meet the conditions described in section 1395x(b)(7) of this title, if the conditions described in subclauses (I) and (II) of subparagraph (A)(i) are met and if the physician elects payment to be determined under this subparagraph, the carrier shall provide for payment for such services under this part on the basis of regulations of the Secretary governing reimbursement for the services of hospital-based physicians (and not on any other basis).

(D)(i) In the case of physicians' services furnished to a patient in a hospital with a teaching program approved as specified in section 1395x(b)(6) of this title, but which does not meet the conditions described in section 1395x(b)(7) of this title, no payment shall be made under this part for services of assistants at surgery with respect to a surgical procedure if such hospital has a training program relating to the medical specialty required for such surgical procedure and a qualified individual on the staff of the hospital is available to provide such services; except that payment may be made under this part for such services, to the extent that such payment is otherwise allowed under this paragraph, if such services, as determined under regulations of the Secretary—

(I) are required due to exceptional medical circumstances,

(II) are performed by team physicians needed to perform complex medical procedures, or

(III) constitute concurrent medical care relating to a medical condition which requires the presence of, and active care by, a physician of another specialty during surgery,

and under such other circumstances as the Secretary determines by regulation to be appropriate.

(ii) For purposes of this subparagraph, the term "assistant at surgery" means a physician who actively assists the physician in charge of a case in performing a surgical procedure.

(iii) The Secretary shall determine appropriate methods of reimbursement of assistants at surgery where such services are reimbursable under this part.

(8)(A) The Secretary by regulation shall—

(i) describe the factors to be used in determining the cases (of particular items or services) in which the application of this subsection results in the determination of a reasonable charge that, by reason of its grossly excessive or grossly deficient amount, is not inherently reasonable, and

(ii) provide in those cases for the factors that will be considered in establishing a reasonable charge that is realistic and equitable.

(B)(i) The Secretary may provide for an increase or decrease in the reasonable charge otherwise recognized under this section with respect to a specific physicians' service only in accordance with the criteria set forth in subparagraph (A) and with the succeeding provisions of this paragraph.

(ii) The factors described pursuant to subparagraph (A)(i) with respect to payment for physicians' services shall include, but need not be limited to, the following:

(I) Prevailing charges for a service in a particular locality are significantly in excess of or below prevailing charges in other comparable localities, taking into account the relative costs of furnishing the services in the different localities.

(II) The programs established under this subchapter and subchapter XIX of this chapter are the sole or primary sources of payment for a service.

(III) The marketplace for a service is not truly competitive because of a limited number of physicians who perform that service.

(IV) There have been increases in charges for a service that cannot be explained by inflation or technology.

(V) The charges do not reflect changing technology, increased facility with that technology, or reductions in acquisition or production costs.

(VI) The prevailing charges for a service under this part are substantially higher or lower than the payments made for the service by other purchasers in the same locality.

(iii) In applying subparagraph (A), the Secretary may compare—

(I) the charges and resource costs for related procedures,

(II) charges and resource costs for the procedure over a period of time,

(III) charges for a procedure in different geographic areas, and

(IV) the charges and allowed payments for a procedure under this part and by other payors.

(iv) The factors considered under subparagraph (A)(ii) shall take into account regional differences in fees, unless there is substantial economic justification for a uniform fee or a uniform payment limit. Such substantial economic justification must be explained by the Secretary in the notice and final determination required by paragraph (9).

(v) An adjustment under clause (i) on the basis of a comparison of the prevailing charges in different localities may be made only if the Secretary determines that the prevailing charge allowed in one locality is out of line with prevailing charges allowed in other localities after accounting for differences in practice costs.

(vi) In this subparagraph, "resource costs" include factors such as the time required to provide a procedure (including pre-procedure evaluation and post-procedure follow-up), the complexity of the procedure, the training required to perform the procedure, and the risk involved in the procedure.

(C) In determining whether to adjust payment rates under subparagraph (B)(i), the Secretary shall consider the potential impacts on quality, access, and beneficiary liability of the adjustment, including the likely effects on assignment rates, reasonable charge reductions on unassigned claims, and participation rates of physicians.

(9)(A) In the case of any physicians' service with respect to which the Secretary—

(i) determines, after appropriate consultation with representatives of the physicians likely to be affected by any change in the reasonable charge, that the application of this subsection results in the determination of a reasonable charge that, by reason of its grossly excessive or grossly deficient amount, is not inherently reasonable, and

(ii) proposes to establish a reasonable charge that is realistic and equitable or a methodology for arriving at such a charge,

the Secretary shall publish notice of such proposal in the Federal Register.

(B) A notice required by subparagraph (A) shall—

(i) specify the charge or methodology proposed to be established with respect to a service and shall explain the factors and data that the Secretary took into account in determining the charge or methodology so specified, and

(ii) explain the potential impacts described in paragraph (8)(C).

(C) After publication of the notice required by subparagraph (A), the Secretary shall allow not less than 60 days for public comment on the proposal.

(D) In addition to carrying out its functions under section 1395w-1 of this title, the Physician Payment Review Commission (in this paragraph referred to as the "Commission") shall comment on any such proposal within the period of comment allowed by the Secretary pursuant to subparagraph (C).

(E)(i) Taking into consideration the comments made by the Commission and the public, the Secretary shall publish in the Federal Register a final determination with respect to the reasonable charge or methodology to be established with respect to the service.

(ii) A final determination published pursuant to clause (i) shall explain the factors and data that the Secretary took into consideration in making the final determination, and shall include and respond to the comments made by the Commission pursuant to subparagraph (D).

(10)(A)(i) If an adjustment under paragraph (8)(B) results in a reduction in the reasonable charge for a physicians' service, and a nonparticipating physician furnishes the service to an individual entitled to benefits under this part after the effective date of such reduction and before the end of the period described in subparagraph (C), the physician may not charge the individual more than the limiting charge (as defined in clause (ii)) plus (for services furnished during the 12-month period beginning on the effective date of the reduction) ⅛ of the amount by which the physician's actual charge for the service for the previous 12-month period exceeds the limiting charge.

(ii) In clause (i), the term "limiting charge" means, with respect to a service, 125 percent of the inherently reasonable charge established under paragraph (8).

(B) If a physician knowingly and willfully imposes charges in violation of subparagraph (A), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section.

(C) Subparagraph (A) shall not apply to services furnished after the earlier of (i) December 31, 1990, or (ii) one-year after the date the Secretary reports to Congress, under section 1395w-1(e)(3) of this title, on the development of the relative value scale under section 1395w-1 of this title.

(11)(A) In providing payment for cataract eyeglasses and cataract contact lenses, and professional services relating to them, under this part, each carrier shall—

(i) provide for separate determinations of the payment amount for the eyeglasses and lenses and of the payment amount for the professional services of a physician (as defined in section 1395x(r) of this title), and

(ii) not recognize as reasonable for such eyeglasses and lenses more than such amount as the Secretary establishes in guidelines relating to the inherent reasonableness of charges for such eyeglasses and lenses.

(B)(i) In determining the reasonable charge under paragraph (3) for a cataract surgical procedure, subject to clause (ii), the prevailing charge for such procedure otherwise recognized for participating and nonparticipating physicians shall be reduced by 10 percent with respect to procedures performed in 1987 and shall be further reduced by 2 percent with respect to procedures performed in 1988. A reduced prevailing charge under this subparagraph shall become the prevailing charge level for subsequent years for purposes of applying the economic index under the fourth sentence of paragraph (3).

(ii) In no case shall the reduction under clause (i) for a surgical procedure result in a prevailing charge in a locality for a year which is less than 75 percent of the weighted national average of such prevailing charges for such procedure for all the localities in the United States for 1986.

(C)(i) In the case of a reduction in the reasonable charge for a physicians' service under subparagraph (B), if a nonparticipating physician furnishes the service to an individual entitled

to benefits under this part after the effective date of such reduction (subject to clause (iv)), the physician may not charge the individual more than the limiting charge (as defined in clause (ii)) plus (for services furnished during the 12-month period beginning on the effective date of the reduction) ¼ of the amount by which the physician's actual charges for the service for the previous 12-month period exceeds the limiting charge.

(ii) In clause (i), the term "limiting charge" means, with respect to a service, 125 percent of the prevailing charge for the service after the reduction referred to in clause (i).

(iii) If a physician knowingly and willfully imposes charges in violation of clause (i), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section.

(iv) This subparagraph shall not apply to services furnished after the earlier of (I) December 31, 1990, or (II) one-year after the date the Secretary reports to Congress, under section 1395w-1(c)(3) of this title, on the development of the relative value scale under section 1395w-1 of this title.

(12)(A) With respect to services described in section 1395x(s)(2)(K) of this title (relating to a physician assistant acting under the supervision of a physician)—

(i) payment under this part may only be made on an assignment-related basis; and

(ii) the prevailing charges determined under paragraph (3) shall not exceed—

(I) in the case of services performed as an assistant at surgery, 65 percent of the amount that would otherwise be recognized if performed by a physician who is serving as an assistant at surgery, or

(II) in other cases, the applicable percentage (as defined in subparagraph (B)) of the prevailing charge rate determined for such services performed by physicians who are not specialists.

(B) In subparagraph (A)(ii)(II), the term "applicable percentage" means—

(i) 75 percent in the case of services performed (other than as an assistant at surgery) in a hospital, and

(ii) 85 percent in the case of other services.

(C) Except for deductible and coinsurance amounts applicable under section 1395*l* of this title, any person who knowingly and willfully presents, or causes to be presented, to an individual enrolled under this part a bill or request for payment for services described in section 1395x(s)(2)(K) of this title in violation of subparagraph (A)(i) is subject to a civil monetary penalty of not to exceed $2,000 for each such bill or request. Such a penalty shall be imposed in the same manner as civil monetary penalties are imposed under section 1320a-7a of this title with respect to actions described in subsection (a) of that section.

(c) Advances of funds to carrier; prompt payment of claims

(1) Any contract entered into with a carrier under this section shall provide for advances of funds to the carrier for the making of payments by it under this part, and shall provide for payment of the cost of administration of the carrier, as determined by the Secretary to be necessary and proper for carrying out the functions covered by the contract. The Secretary shall provide that in determining a carrier's necessary and proper cost of administration, the Secretary shall, with respect to each contract, take into account the amount that is reasonable and adequate to meet the costs which must be incurred by an efficiently and economically operated carrier in carrying out the terms of its contract.

(2)(A) Each contract under this section which provides for the disbursement of funds, as described in subsection (a)(1)(B) of this section, shall provide that payment shall be issued, mailed, or otherwise transmitted with respect to not less than 95 percent of all claims submitted under this part—

(i) which are clean claims, and

(ii) for which payment is not made on a periodic interim payment basis,

within the applicable number of calendar days after the date on which the claim is received.

(B) In this paragraph:

(i) The term "clean claim" means a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this part.

(ii) The term "applicable number of calendar days" means—

(I) with respect to claims received in the 12-month period beginning October 1, 1986, 30 calendar days,

(II) with respect to claims received in the 12-month period beginning October 1, 1987, 26 calendar days (or 19 calendar days with respect to claims submitted by participating physicians),

(III) with respect to claims received in the 12-month period beginning October 1, 1988, 25 calendar days (or 18 calendar days with respect to claims submitted by participating physicians), and

(IV) with respect to claims received in the 12-month period beginning October 1, 1989, and claims received in any succeeding 12-month period, 24 calendar days (or 17 calendar days with respect to claims submitted by participating physicians).

(C) If payment is not issued, mailed, or otherwise transmitted within the applicable number of calendar days (as defined in clause (ii) of subparagraph (B)) after a clean claim (as defined in clause (i) of such subparagraph) is received, interest shall be paid at the rate used for purposes of section 3902(a) of title 31 (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made.

[*See main edition for text of* (d) *to* (g)]

(h) Participating physician or supplier; agreement with Secretary; publication of directories; availability; inclusion of program in explanation of benefits; payment of claims on assignment-related basis

(1) Any physician or supplier may voluntarily enter into an agreement with the Secretary to become a participating physician or supplier. For purposes of this section, the term "participating physician or supplier" means a physician or supplier (excluding any provider of services) who, before the beginning of any year beginning with 1984, enters into an agreement with the Secretary which provides that such physician or supplier will accept payment under this part on an assignment-related basis for all items and services furnished to individuals enrolled under this part during such year. In the case of a newly licensed physician or a physician who begins a practice in a new area, or in the case of a new supplier who begins a new business, or in such similar cases as the Secretary may specify, such physician or supplier may enter into such an agreement after the beginning of a year, for items and services furnished during the remainder of the year.

(2) Each carrier having an agreement with the Secretary under subsection (a) of this section shall maintain a toll-free telephone number or numbers at which individuals enrolled under this part may obtain the names, addresses, specialty, and telephone numbers of participating physicians and suppliers and may request a copy of an appropriate directory published under paragraph (4). Each such carrier shall, without charge, mail a copy of such directory upon such a request.

(3) In any case in which a carrier having an agreement with the Secretary under subsection (a) of this section is able to develop a system for the electronic transmission to such carrier of bills for services, such carrier shall establish direct lines for the electronic receipt of claims from participating physicians and suppliers.

(4) At the beginning of each year the Secretary shall publish directories (for appropriate local geographic areas) containing the name, address, and specialty of all participating physicians and suppliers (as defined in paragraph (1)) for that area for that year. Each directory shall be organized to make the most useful presentation of the information (as determined by the Secretary) for individuals enrolled under this part. Each participating physician directory for an area shall provide an alphabetical listing of all participating physicians practicing in the area and an alphabetical listing by locality and specialty of such physicians.

(5) The Secretary shall promptly notify individuals enrolled under this part of the the [7] participation program under this subsection and the publication and availability of the directories and shall make the appropriate area directory or directories available in each district and branch office of the Social Security Administration, in the offices of carriers, and to senior citizen organizations. The Secretary shall include such notice in the mailing of appropriate benefit checks provided under subchapter II of this chapter.

(6) The Secretary shall provide that the directories shall be available for purchase by the public. The Secretary shall provide that each appropriate area directory is sent to each participating physician located in that area and that an appropriate number of copies of each such directory is sent to hospitals located in the area. Such copies shall be sent free of charge.

(7) The Secretary shall provide that each explanation of benefits provided under this part for services furnished in the United States, in conjunction with the payment of claims under section 1395*l*(a)(1) of this title (made other than on an assignment-related basis, described in paragraph (8)), shall include—

(A) a reminder of the participating physician and supplier program established under this subsection (including the limitation on charges that may be imposed by such physicians and suppliers), and

(B) the toll-free telephone number or numbers, maintained under paragraph (2), at which an individual enrolled under this part may obtain information on participating physicians and suppliers.

(8) For purposes of this subchapter, a claim is considered to be paid on an "assignment-related basis" if the claim is paid on the basis of an assignment described in subsection (b)(3)(B)(ii) of this section, in accordance with subsection (b)(6)(B) of this section, or under the procedure described in section 1395gg(f)(1) of this title.

(i) Repealed or redesignated

(1) Repealed. Pub. L. 99-272, title IX, § 9301(c)(3)(A), Apr. 7, 1986, 100 Stat. 187.

(2) to (4) Redesignated (h)(4) to (6).

(j) Monitoring of charges of nonparticipating physicians; sanctions; restitution

(1)(A) In the case of a physician who is not a participating physician for items and services furnished during a portion of the 30-month period beginning July 1, 1984, the Secretary shall monitor the physician's actual charges to individuals enrolled under this part for physicians' services during that portion of that period. If such physician knowingly and willfully bills individuals enrolled under this part for actual charges in excess of such physician's actual charges for the calendar quarter beginning on April 1, 1984, the Secretary may apply sanctions against such physician in accordance with paragraph (2).

(B)(i) During any period (on or after January 1, 1987, and before the date specified in clause (ii)), during which a physician is a nonparticipating physician, the Secretary shall monitor each such physician's actual charges for physicians' services furnished to individuals enrolled under this part. If such physician knowingly and willfully bills for such a service a physician's actual charge (as defined in subparagraph (C)(vi) [8] in excess of the maximum allow-

[7] So in original.

[8] So in original. Probably should be followed by a closing parenthesis.

able actual charge determined under subparagraph (C) for that service, the Secretary may apply sanctions against such physician in accordance with paragraph (2).

(ii) Clause (i) shall not apply to services furnished after the earlier of (I) December 31, 1990, or (II) one-year after the date the Secretary reports to Congress, under section 1395w-1(e)(3) of this title, on the development of the relative value scale under section 1395w-1 of this title.

(C)(i) For a particular physicians' service furnished by a nonparticipating physician to individuals enrolled under this part during a year, for purposes of subparagraph (B), the maximum allowable actual charge is determined as follows: If the physician's actual charge for that service in the previous year was—

(I) less than 115 percent of the prevailing charge for the year involved for such service furnished by nonparticipating physicians, the maximum allowable actual charge for the year involved is the greater of the maximum allowable actual charge described in subclause (II) or the charge described in clause (ii), or

(II) equal to, or greater than, 115 percent of the prevailing charge for the year involved for such service furnished by nonparticipating physicians, the maximum allowable actual charge is 101 percent of the physician's maximum allowable actual charge for the service for the previous year.

(ii) For purposes of clause (i)(I), the charge described in this clause for a particular physicians' service furnished in a year is the maximum allowable actual charge for the service of the physician for the previous year plus the product of (I) the applicable fraction (as defined in clause (iii)) and (II) the amount by which 115 percent of the prevailing charge for the year involved for such service furnished by nonparticipating physicians, exceeds the physician's maximum allowable actual charge for the service for the previous year.

(iii) In clause (ii), the "applicable fraction" is—

(I) for 1987, ¼,
(II) for 1988, ½,
(III) for 1989, ¾, and
(IV) for any subsequent year, 1.

(iv) For purposes of determining the maximum allowable actual charge under clauses (i) and (ii) for 1987, in the case of a physicians' service for which the physician has actual charges for the calendar quarter beginning on April 1, 1984, the "maximum allowable actual charge" for 1986 is the physician's actual charge for such service furnished during such quarter.

(v) For purposes of determining the maximum allowable actual charge under clauses (i) and (ii) for a year after 1987, in the case of a physicians' service for which the physician has no actual charges for the calendar quarter beginning on April 1, 1984, and for which a maximum allowable actual charge has not been previously established under this clause, the "maximum allowable actual charge" for the previous year shall be the 50th percentile of the customary charges for the service (weighted by frequency of the service) performed by nonparticipating physicians in the locality during the 12-month period ending June 30 of that previous year.

(vi) For purposes of this subparagraph and subparagraph (B), a "physician's actual charge" for a physicians' service furnished in a year or other period is the weighted average (or, at the option of the Secretary for a service furnished in the calendar quarter beginning April 1, 1984, the median) of the physician's charges for such service furnished in the year or other period.

(2) Subject to paragraph (3), the sanctions which the Secretary may apply under this paragraph are—

(A) barring a physician from participation under the program under this subchapter for a period not to exceed 5 years, in accordance with the procedures of paragraphs (2) and (3) of section 1395y(d) of this title, or

(B) the imposition of civil monetary penalties and assessments, in the same manner as such penalties are authorized under section 1320a-7a(a) of this title,

or both. No payment may be made under this subchapter with respect to any item or service furnished by a physician during the period when he is barred from participation in the program under this subchapter pursuant to this subsection.

(3)(A) The Secretary may not bar a physician pursuant to paragraph (2)(A) if such physician is a sole community physician or sole source of essential specialized services in a community.

(B) The Secretary shall take into account access of beneficiaries to physicians' services for which payment may be made under this part in determining whether to bar a physician from participation under paragraph (2)(A).

(4) The Secretary may, out of any civil monetary penalty or assessment collected from a physician pursuant to this subsection, make a payment to a beneficiary enrolled under this part in the nature of restitution for amounts paid by such beneficiary to such physician which was determined to be an excess charge under paragraph (1).

(k) Sanctions for billing for services of assistant at cataract operations

(1) If a physician knowingly and willfully presents or causes to be presented a claim or bills an individual enrolled under this part for charges for services as an assistant at surgery for which payment may not be made by reason of section 1395y(a)(15) of this title, the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section.

(2) If a physician knowingly and willfully presents or causes to be presented a claim or bills an individual enrolled under this part for charges that includes a charge for an assistant at surgery for which payment may not be made by reason of section 1395y(a)(15) of this title, the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section.

(*l*) Prohibition of unassigned billing of services determined to be medically unnecessary by carrier

(1)(A) Subject to subparagraph (C), if—

(i) a nonparticipating physician furnishes services to an individual enrolled for benefits under this part,

(ii) payment for such services is not accepted on an assignment-related basis,

(iii) a carrier determines under this part or a peer review organization determines under part B of subchapter XI of this chapter that payment may not be made by reason of section 1395y(a)(1) of this title because a service otherwise covered under this subchapter is not reasonable and necessary under the standards described in that section, and

(iv) the physician has collected any amounts for such services,

the physician shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts so collected.

(B) A refund under subparagraph (A) is considered to be on a timely basis only if—

(i) in the case of a physician who does not request reconsideration or seek appeal on a timely basis, the refund is made within 30 days after the date the physician receives a denial notice under paragraph (2), or

(ii) in the case in which such a reconsideration or appeal is taken, the refund is made within 15 days after the date the physician receives notice of an adverse determination on reconsideration or appeal.

(C) Subparagraph (A) shall not apply to the furnishing of a service by a physician to an individual if—

(i) the physician did not know and could not reasonably have been expected to know that payment may not be made for the service by reason of section 1395y(a)(1) of this title, or

(ii) before the service was provided, the individual was informed that payment under this part may not be made for the specific service and the individual has agreed to pay for that service.

(2) Each carrier with a contract in effect under this section with respect to physicians and each peer review organization with a contract under part B of subchapter XI of this chapter shall send any notice of denial of payment for physicians' services based on section 1395y(a)(1) of this title and for which payment is not requested on an assignment-related basis to the physician and the individual involved.

(3) If a physician knowingly and willfully fails to make refunds in violation of paragraph (1)(A), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section.

(m) Disclosure of information of unassigned claims for certain physicians' services

(1) In the case of a nonparticipating physician who—

(A) performs an elective surgical procedure for an individual enrolled for benefits under this part and for which the physician's actual charge is at least $500, and

(B) does not accept payment for such procedure on an assignment-related basis,

the physician must disclose to the individual, in writing and in a form approved by the Secretary, the physician's estimated actual charge for the procedure, the estimated approved charge under this part for the procedure, the excess of the physician's actual charge over the approved charge, and the coinsurance amount applicable to the procedure. The written estimate may not be used as the basis for, or evidence in, a civil suit.

(2) A physician who fails to make a disclosure required under paragraph (1) with respect to a procedure shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts collected for the procedure in excess of the charges recognized and approved under this part.

(3) If a physician knowingly and willfully fails to comply with paragraph (2), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section.

(4) The Secretary shall provide for such monitoring of requests for payment for physicians' services to which paragraph (1) applies as is necessary to assure compliance with paragraph (2).

(Aug. 14, 1935, ch. 531, title XVIII, § 1842, as added July 30, 1965, Pub. L. 89-97, title I, § 102(a), 79 Stat. 309, and amended Jan. 2, 1968, Pub. L. 90-248, title I, §§ 125(a), 154(d), 81 Stat. 845, 863; Oct. 30, 1972, Pub. L. 92-603, title II, §§ 211(c)(3), 224(a), 227(e)(3), 236(a), 258(a), 262(a), 263(d)(5), 281(d), 86 Stat. 1384, 1395, 1407, 1414, 1447-1449, 1455; Oct. 16, 1974, Pub. L. 93-445, title III, § 307, 88 Stat. 1358; Dec. 31, 1975, Pub. L. 94-182, title I, § 101(a), 89 Stat. 1051; July 16, 1976, Pub. L. 94-368, §§ 2, 3(a), (b), 90 Stat. 997; Oct. 25, 1977, Pub. L. 95-142, § 2(a)(1), 91 Stat. 1175; Dec. 20, 1977, Pub. L. 95-216, title V, § 501(b), 91 Stat. 1565; Dec. 5, 1980, Pub. L. 96-499, title IX, §§ 918(a)(1), 946(a), (b), 948(b), 94 Stat. 2625, 2642, 2643; Aug. 13, 1981, Pub. L. 97-35, title XXI, § 2142(b), 95 Stat. 798; Sept. 3, 1982, Pub. L. 97-248, title I, §§ 104(a), 113(a), 128(d)(1), 96 Stat. 336, 340, 367; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2303(e), 2306(a), (b)(1), (c), 2307(a)(1), (2), 2326(c)(2), (d)(2), 2339, 2354(b)(13), (14), title VI, 2663(j)(2)(F)(iv), 98 Stat. 1066, 1070, 1071, 1073, 1087, 1088, 1093, 1101, 1170; Nov. 8, 1984, Pub. L. 98-617, § 3(a)(1), (b)(5), (6), 98 Stat. 3295, 3296; Apr. 7, 1986, Pub. L. 99-272, title IX, §§ 9219(b)(1)(A), (2)(A), 9301(b)(1), (2), (c)(2)-(4), (d)(1)-(3), 9304(a), 9306(a), 9307(c), 100 Stat. 182-188, 190, 193, 194; Oct. 21, 1986, Pub. L. 99-509, title IX, §§ 9307(c)(2)(A), 9311(c), 9320(e)(3), 9331(a)(1)-(3), (b)(1)-(3), (c)(3)(A), 9332(a)(1), (b)(1), (2), (c)(1), (d)(1), 9333(a), (b), 9334(a), 9338(b), (c), 9341(a)(2), 100 Stat. 1995, 1998, 2015, 2018-2026, 2028, 2035, 2038; Oct. 22, 1986, Pub. L. 99-514, title XVIII, § 1895(b)(14)(A), (15), (16)(A), 100 Stat. 2934.)

REFERENCES IN TEXT

Part B of subchapter XI of this chapter, referred to in subsec. (*l*)(1)(A)(iii), (2), is classified to section 1320c et seq. of this title.

AMENDMENTS

1986—Subsec. (b)(3). Pub. L. 99-509, § 9331(c)(3)(A), inserted "or (with respect to physicians services furnished in a year after 1987) the level determined under this sentence for the previous year" after "ending June 30, 1973," and "year-to-year" before "economic changes" in fourth sentence.

Pub. L. 99-272, § 9301(d)(1)(B), (C), substituted "June 30 last preceding the start of the calendar year" for "March 31 last preceding the start of the twelve-month period (beginning October 1 of each year)" in third sentence, and struck out "the twelve-month period beginning on October 1 in" before "any calendar year after 1974" in eighth sentence.

Subsec. (b)(3)(C). Pub. L. 99-509, § 9341(a)(2), substituted "at least $100, but not more than $500" for "$100 or more".

Subsec. (b)(3)(F). Pub. L. 99-272, § 9301(d)(1)(A), struck out "(ending on September 30)" after "before the year".

Subsec. (b)(3)(G). Pub. L. 99-509, § 9331(b)(2), added subpar. (G).

Subsec. (b)(3)(H). Pub. L. 99-509, § 9332(a)(1), added subpar. (H).

Subsec. (b)(4)(A)(i), (ii). Pub. L. 99-272, § 9301(b)(1)(A), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (b)(4)(A)(iii). Pub. L. 99-509, § 9331(a)(1), added cl. (iii) and struck out former cl. (iii) which read as follows: "In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during a 12-month period beginning on or after January 1, 1987, by a physician who is not a participating physician (as defined in subsection (h)(1) of this section) at the time of furnishing the services, the Secretary shall not set any level higher than the same level as was set for services furnished during the previous calendar year (without regard to clause (ii)(II)) for physicians who were participating physicians during that year."

Pub. L. 99-272, § 9301(b)(1)(A)(ii), added cl. (iii).

Subsec. (b)(4)(A)(iv), (v). Pub. L. 99-509, § 9331(a)(1), added cls. (iv) and (v).

Subsec. (b)(4)(B). Pub. L. 99-272, § 9301(b)(1)(B), designated existing previsions as cl. (i) and added cl. (ii).

Subsec. (b)(4)(C). Pub. L. 99-509, § 9331(a)(2), directed amendment of subpar. (C) by striking out "(i)" after "(C)" and striking out cl. (ii), applicable to services furnished on or after Jan. 1, 1987, which is identical to amendment by Pub. L. 99-514, § 1895(b)(14)(A), as amended, effective as if included in enactment of Pub. L. 99-272.

Pub. L. 99-514, § 1895(b)(14)(A), as amended by Pub. L. 99-509, § 9307(c)(2)(A), struck out cl. (i) designation, and struck out cl. (ii) which read as follows: "In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the periods beginning after December 31, 1986, by a physician who was not a participating physician on that date, the Secretary shall treat the level as set under subparagraph (A)(ii) as having fully provided for the economic changes which would have been taken into account but for the limitations contained in subparagraph (A)(ii)."

Pub. L. 99-272, § 9301(b)(1)(C), designated existing provisions as cl. (i), substituted "subparagraph (A)(i)" for "subparagraph (A)" wherever appearing, and added cl. (ii).

Subsec. (b)(4)(D)(i) to (iii). Pub. L. 99-272, § 9301(b)(1)(D), designated existing provisions as cl. (i), substituted "In determining the customary charges for physicians' services furnished during the 8-month period beginning May 1, 1986, or the 12-month period beginning January 1, 1987, by a physician who was not a participating physician (as defined in subsection (h)(1) of this section) on September 30, 1985" for "In determining the customary charges for physicians' services furnished during the 12-month period beginning October 1, 1985, or October 1, 1986, by a physician who at no time for any services furnished during the 12-month period beginning October 1, 1984, was a participating physician (as defined in subsection (h)(1) of this section)", and added cls. (ii) and (iii).

Subsec. (b)(4)(D)(iv). Pub. L. 99-509, § 9331(b)(3), added cl. (iv).

Subsec. (b)(4)(E). Pub. L. 99-509, § 9331(a)(3), added subpar. (E).

Subsec. (b)(6). Pub. L. 99-509, § 9338(c), substituted "except that (A) payment may be made (i)" for "except that payment may be made (A)(i)", substituted "(B) payment may be made" for "or (B)", and inserted before the period at end ", and (C) in the case of services described in section 1395x(s)(2)(K) of this title payment shall be made to the employer of the physician assistant involved".

Subsec. (b)(7)(B)(ii)(III). Pub. L. 99-272, § 9219(b)(1)(A), realigned margin of subcl. (III).

Subsec. (b)(7)(B)(iii). Pub. L. 99-272, § 9219(b)(2)(A), realigned margin of cl. (iii).

Subsec. (b)(8). Pub. L. 99-509, § 9333(a), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpars. (B) and (C).

Pub. L. 99-272, § 9304(a), added par. (8).

Subsec. (b)(9). Pub. L. 99-509, § 9333(b), added par. (9). Former par. (9) redesignated (11).

Pub. L. 99-272, § 9306(a), added par. (9).

Subsec. (b)(10). Pub. L. 99-509, § 9333(b), added par. (10).

Subsec. (b)(11). Pub. L. 99-509, § 9334(a), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpars. (B) and (C).

Pub. L. 99-509, § 9333(b), redesignated former par. (9) as (11).

Subsec. (b)(12). Pub. L. 99-509, § 9338(b), added par. (12).

Subsec. (c). Pub. L. 99-509, § 9311(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (h)(1). Pub. L. 99-272, § 9301(d)(2), substituted "before the beginning of any year beginning with 1984" for "before October 1 of any year beginning with 1984", "on an assignment-related basis" for "on the basis of an assignment described in subsection (b)(3)(B)(ii) of this section, in accordance with subsection (b)(6)(B) of this section, or under the procedure described in section 1395gg(f)(1) of this title", "during such year" for "during the 12-month period beginning on October 1 of such year", "after the beginning of a year" for "after October 1 of a year", and "during the remainder of the year" for "during the remainder of the 12-month period beginning on such October 1".

Subsec. (h)(2). Pub. L. 99-509, § 9332(b)(1)(A), struck out the period at end and substituted "and may request a copy of an appropriate directory published under paragraph (4). Each such carrier shall, without charge, mail a copy of such directory upon such a request."

Subsec. (h)(4). Pub. L. 99-509, § 9332(b)(2), inserted at end "Each participating physician directory for an area shall provide an alphabetical listing of all participating physicians practicing in the area and an alphabetical listing by locality and specialty of such physicians."

Pub. L. 99-272, § 9301(c)(3)(D), redesignated par. (2) of subsec. (i) as par. (4) of this subsection.

Subsec. (h)(5). Pub. L. 99-509, § 9332(b)(1)(B), substituted "the participation program under this subsection and the publication and availability of the directories" for "publication of the directories" and inserted at end "The Secretary shall include such notice in the mailing of appropriate benefit checks provided under subchapter II of this chapter."

Pub. L. 99-514, § 1895(b)(15)(A), struck out "such" before "the directories" and before "the appropriate area directory".

Pub. L. 99-272, § 9301(c)(3)(D), redesignated par. (3) of subsec. (i) as par. (5) of this subsection.

Subsec. (h)(6). Pub. L. 99-509, § 9332(b)(1)(C), inserted before the period at end of second sentence "and that an appropriate number of copies of each such directory is sent to hospitals located in the area" and inserted at end "Such copies shall be sent free of charge."

Pub. L. 99-514, § 1895(b)(15)(B), substituted "the" for "the the" before "directories".

Pub. L. 99-272, § 9301(c)(3)(D), redesignated par. (4) of subsec. (i) as par. (6) of this subsection.

Subsec. (h)(7), (8). Pub. L. 99-272, § 9301(c)(4), added pars. (7) and (8).

Subsec. (i)(1). Pub. L. 99-272, § 9301(c)(3)(A), struck out par. (1) which required the Secretary to publish a list containing the name, address, specialty, and percent of claims submitted with respect to each physician and supplier during preceding year that were paid on the basis of an assignment described in subsec. (b)(3)(B)(ii) of this section, in accordance with subsec. (b)(6)(B) of this section, or under procedure described in section 1395gg(f)(1) of this title.

Subsec. (i)(2). Pub. L. 99-272, § 9301(c)(3)(D), redesignated par. (2) of this subsection as par. (4) of subsec. (h).

Pub. L. 99-272, § 9301(d)(3), substituted "year" for "fiscal year", wherever appearing.

Pub. L. 99-272, § 9301(c)(2)(A), (B), (3)(B), substituted "shall publish directories (for appropriate local geographic areas)" for "shall publish a directory", inserted "for that area" before "for that fiscal year", substituted "Each directory shall" for "The directory shall", and substituted "paragraph (1)" for "subsection (h)(1) of this section".

Subsec. (i)(3). Pub. L. 99-272, § 9301(c)(3)(D), redesignated par. (3) of this subsection as par. (5) of subsec. (h).

Pub. L. 99-272, § 9301(c)(2)(C), (3)(C), struck out "directory" first place it appeared and inserted in lieu "the directories", struck out "directory" second place it appeared and inserted in lieu "the appropriate area directory or directories", and struck out "list and" wherever appearing.

Subsec. (i)(4). Pub. L. 99-272, § 9301(c)(3)(D), redesignated par. (4) of this subsection as par. (6) of subsec. (h).

Pub. L. 99-272, § 9301(c)(2)(D), (3)(C), struck out "list and" after "The Secretary shall provide that the" in first sentence, substituted "the directories shall" for "directory shall", and inserted provision requiring the Secretary to provide that each appropriate area directory be sent to each participating physician located in that area.

Subsec. (j)(1). Pub. L. 99-509, § 9331(b)(1), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Pub. L. 99-272, § 9301(b)(2), amended first sentence generally. Prior to amendment, first sentence read as follows: "In the case of a physician who is not a participating physician, the Secretary shall monitor each such physician's actual charges to individuals enrolled under this part for physicians' services furnished during the 15-month period beginning July 1, 1984."

Subsec. (j)(2). Pub. L. 99-509, § 9320(e)(3), substituted "this paragraph" for "paragraph (1) or subsection (k) of this section" in introductory text.

Pub. L. 99-272, § 9307(c)(1), inserted reference to subsec. (k) of this section in introductory text.

Subsec. (k). Pub. L. 99-514, § 1895(b)(16)(A), inserted "presents or causes to be presented a claim or" in pars. (1) and (2).

Pub. L. 99-272, § 9307(c)(2), added subsec. (k).

Subsec. (*l*). Pub. L. 99-509, § 9332(c)(1), added subsec. (*l*).

Subsec. (m). Pub. L. 99-509, § 9332(d)(1), added subsec. (m).

1984—Subsec. (b)(2). Pub. L. 98-369, § 2326(c)(2), inserted at end provision that the Secretary publish in the Federal Register standards and criteria for efficient and effective performance of contract obligations under this section and provide an opportunity for public comment prior to implementation.

Subsec. (b)(3). Pub. L. 98-369, § 2306(b)(1)(B), (C), substituted "during the 12-month period ending on the March 31 last preceding" for "during the last preceding calendar year elapsing prior to" in third sentence and substituted "October 1" for "July 1" wherever appearing in third and eighth sentences.

Pub. L. 98-369, § 2354(b)(14), substituted "(I)" and "(II)" for "(i)" and "(ii)", respectively in concluding provisions.

Pub. L. 98-369, § 2663(j)(2)(F)(iv), substituted "Health and Human Services" for "Health, Education, and Welfare" in concluding provisions.

Subsec. (b)(3)(B)(ii)(II). Pub. L. 98-369, § 2354(b)(13), struck out the period after "subchapter".

Subsec. (b)(3)(F). Pub. L. 98-369, § 2306(b)(1)(A), substituted "September 30" for "June 30".

Subsec. (b)(4), (5). Pub. L. 98-369, § 2306(a), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (b)(6). Pub. L. 98-369, § 2339, redesignated cl. (A) as cl. (A)(i) and former cl. (B) as cl. (A)(ii), added a new cl. (B), and in the provisions after cl. (B), substituted "clause (A) of such sentence" for "clause (A) or (B) of such sentence".

Pub. L. 98-369, § 2306(a), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (b)(7). Pub. L. 98-369, § 2306(a), redesignated par. (6) as (7).

Subsec. (b)(7)(A). Pub. L. 98-617, § 3(b)(5)(B), struck out at end "If all the teaching physicians in a hospital agree to have payment made for all of their physicians' services under this part furnished patients in the hospital on the basis of an assignment described in paragraph (3)(B)(ii) or under the procedure described in section 1395gg(f)(1) of this title, notwithstanding clause (ii) of this subparagraph, the carrier shall provide for payment in an amount equal to 90 percent of the prevailing charges paid for similar services in the same locality."

Pub. L. 98-369, § 2307(a)(1), as amended by Pub. L. 98-617, § 3(a)(1), inserted "If all the teaching physicians in a hospital agree to have payment made for all of their physicians' services under this part furnished patients in the hospital on the basis of an assignment described in paragraph (3)(B)(ii) or under the procedure described in section 1395gg(f)(1) of this title, notwithstanding clause (ii) of this subparagraph, the carrier shall provide for payment in an amount equal to 90 percent of the prevailing charges paid for similar services in the same locality." at the end.

Subsec. (b)(7)(A)(ii). Pub. L. 98-617, § 3(b)(5)(A), substituted "the payment is based upon a reasonable charge for the services in excess of the customary charge as determined in accordance with subparagraph (B)" for "the amount of the payment exceeds the reasonable charge for the services (with the customary charge determined consistont with subparagraph (B))".

Subsec. (b)(7)(B)(i). Pub. L. 98-369, § 2307(a)(2)(A), (B), substituted "physician who is not a teaching physician (as defined by the Secretary)" for "physician who has a substantial practice outside the teaching sctting" and "practice outside the teaching setting" for "outside practice".

Subsec. (b)(7)(B)(ii). Pub. L. 98-369, § 2307(a)(2)(C), (D), substituted "In the case of a teaching physician" for "In the case of a physician who does not have a practice described in clause (i)" and "greatest" for "greater".

Subsec. (b)(7)(B)(ii)(III). Pub. L. 98-369, § 2307(a)(2)(E)-(G), added subcl. (III).

Subsec. (b)(7)(B)(iii). Pub. L. 98-617, § 3(b)(6), added cl. (iii).

Subsec. (c). Pub. L. 98-369, § 2326(d)(2), inserted provision that the Secretary, in determining a carrier's

necessary and proper cost of administration with respect to each contract, take into account the amount that is reasonable and adequate to meet the costs which must be incurred by an efficiently and economically operated carrier in carrying out the terms of its contract.

Subsec. (h). Pub. L. 98-369, § 2306(c), added subsec. (h).

Pub. L. 98-369, § 2303(e), struck out subsec. (h) providing for payment for laboratory tests.

Subsecs. (i), (j). Pub. L. 98-369, § 2306(c), added subsecs. (i) and (j).

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 1895(b)(16)(B) of Pub. L. 99-514 provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to claims presented after the date of the enactment of this Act [Oct. 22, 1986]."

Amendment by section 1895(b)(14)(A), (15) of 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.

Section 9307(c)(2) of Pub. L. 99-509 provided in part that amendment by section 9307(c)(2)(A) of Pub. L. 99-509 [amending directory language of section 1895(b)(14)(A)(ii) of Pub. L. 99-514 which amended this section] is effective as if included in the enactment of the Tax Reform Act of 1986, Pub. L. 99-514.

Amendment to subsec. (c) by section 9311(c) of Pub. L. 99-509 applicable to claims received on or after Nov. 1, 1986, with enactment of subsec. (c)(2)(C) of this section applicable to claims received on or after Apr. 1, 1987, see section 9311(d) of Pub. L. 99-509, set out as a noto under section 1395h of this title.

Amendment by section 9320(e)(3) of Pub. L. 99-509 applicable to services furnished on or after Jan. 1, 1989, see seetion 9320(i) of Pub. L. 99-509, set out as a note under section 1395k of this title.

Section 9331(a)(4) of Pub. L. 99-509 provided that: "The amendments made by this subsection [amending this section] shall apply to services furnished on or after January 1, 1987."

Section 9331(b)(4) of Pub. L. 99-509 provided that: "The amendments made by this subsection [amending this section] shall apply to services furnished on or after January 1, 1987."

Section 9331(c)(3)(B) of Pub. L. 99-509 provided that: "The amendments made by subparagraph (A) [amending this section] shall apply to physicians' services furnished on or after January 1, 1988."

Section 9332(a)(4)(A) of Pub. L. 99-509 provided that: "The amendment made by paragraph (1) [amending this section] shall be effective for contracts under section 1842 of the Social Security Act [this section] as of October 1, 1987."

Section 9332(b)(3) of Pub. L. 99-509 provided that: "The amendments made by this paragraph [probably means 'this subsection' which amended this section] shall first apply to directories for 1987."

Section 9332(c)(2) of Pub. L. 99-509 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to services furnished on or after October 1, 1987."

Section 9332(d)(2) of Pub. L. 99-509 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to surgical procedures performed on or after October 1, 1987."

Section 9333(d) of Pub. L. 99-509 provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 21, 1986]."

Section 9334(c) of Pub. L. 99-509 provided that: "The amendments made by this section [amending this section] shall apply to services furnished on or after January 1, 1987."

Amendment by section 9338(b) and (c) of Pub. L. 99-509 applicable to services furnished on or after Jan. 1, 1987, see section 9338(f) of Pub. L. 99-509 set out as a note under section 1395x of this title.

Amendment by section 9341(a)(2) of Pub. L. 99-509 applicable to items and services furnished on or after Jan. 1, 1987, see section 9341(b) of Pub. L. 99-509, set out as a note under section 1395ff of this title.

Section 9219(b)(1)(D) of Pub. L. 99-272 provided that: "The amendments made by this paragraph [amending sections 1395u, 1395x, and 1395yy of this title] shall be effective as if they had been originally included in the Deficit Reduction Act of 1984 [Pub. L. 98-369]."

Section 9219(b)(2)(B) of Pub. L. 99-272 provided that: "The amendment made by subparagraph (A) [amending this section] shall be effective as if it had been originally included in Public Law 98-617."

Section 9301(b)(4) of Pub. L. 99-272 provided that: "The amendments made by this subsection [amending this section and enacting provisions set out as a note under this section] shall apply to services furnished on or after May 1, 1986."

Section 9301(c)(5) of Pub. L. 99-272, as amended by Pub. L. 99-514, title XVIII, § 1895(b)(14)(B), Oct. 22, 1986, 100 Stat. 2934, provided that: "Section 1842(h)(7) of the Social Security Act [42 U.S.C. 1395u(h)(7)], as added by paragraph (4) of this subsection, shall apply to explanations of benefits provided on or after such date (not later than October 1, 1988) as the Secretary of Health and Human Services shall specify."

Section 9301(d)(4) of Pub. L. 99-272 provided that: "The amendments made by this subsection [amending this section and enacting provisions set out as a note under this section] shall apply to items and services furnished on or after October 1, 1988."

Section 9306(b) of Pub. L. 99-272 provided that: "The amendments made by this section [amending this section] shall apply to items and services furnished on or after April 1, 1986."

Amendment by section 9307(c) of Pub. L. 99-272 applicable to services performed on or after April 1, 1986, see section 9307(e) of Pub. L. 99-272, set out as a note under section 1320c-3 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98-369, see section 3(c) of Pub. L. 98-617, set out as a note under section 1395f of this title.

Amendment by section 2303(e) of Pub. L. 98-369 applicable to clinical diagnostic laboratory tests furnished on or after July 1, 1984, but not applicable to clinical diagnostic laboratory tests furnished to inpatients of a provider operating under a waiver granted pursuant to section 602(k) of Pub. L. 98-21, set out as a note under section 1395y of this title, see section 2303(j)(1), (3), of Pub. L. 98-369, set out as a note under section 1395l of this title.

Section 2306(b)(2) of Pub. L. 98-369 provided that: "The amendments made by paragraph (1) [amending this section] shall apply to items and services furnished on or after October 1, 1985."

Section 2307(a)(3) of Pub. L. 98-369 provided that: "The amendments made by this subsection [amending this section] shall apply to services furnished on or after July 1, 1984."

Amendment by section 2326(d)(2) of Pub. L. 98-369 applicable to agreements and contracts entered into or renewed after Sept. 30, 1984, see section 2326(d)(3) of Pub. L. 98-369, set out as a note under section 1395h of this title.

Amendment by section 2354(b)(13), (14) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing

or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

AMENDMENTS IN CONTRACTS AND REGULATIONS

The Secretary of Health and Human Services to provide for such timely amendments to contracts under this section, and regulations, to such extent as may be necessary to implement Pub. L. 99-509 on a timely basis, see section 9311(d)(3) of Pub. L. 99-509, set out as an Effective Date of 1986 Amendment noto under section 1395h of this title.

MEDICARE ECONOMIC INDEX

Section 9331(c)(1), (2), (4) to (6) of Pub. L. 99-509 provided that:

"(1) FOR 1987.—Notwithstanding any other provision of law, for purposes of part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.] for physicians' services furnished in 1987, the percentage increase in the MEI (as defined in section 1842(b)(4)(E)(ii) of the Social Security Act [42 U.S.C. 1395u(b)(4)(E)(ii)]) shall be 3.2 percent.

"(2) PROHIBITING RETROACTIVE ADJUSTMENT OF MEDICARE ECONOMIC INDEX.—The Secretary of Health and Human Services is not authorized to revise the MEI in a manner that provides, for any period before January 1, 1985, for the substitution of a rental equivalence or rental substitution factor for the housing component of the consumer price index."

"(4) STUDY.—The Secretary shall conduct a study of the extent to which the MEI appropriately and equitably reflects economic changes in the provision of the physicians' services to medicare beneficiaries. In conducting such study the Secretary shall consult with appropriate experts.

"(5) LIMITATION ON CHANGES IN MEI METHODOLOGY.—The Secretary shall not change the methodology (including the basis and elements) used in the MEI from that in effect as of October 1, 1985, until completion of the study under paragraph (4). After the completion of the study, the Secretary may not change such methodology except after providing notice in the Federal Register and opportunity for public comment.

"(6) MEI DEFINED.—In this subsection, the term 'MEI' means the economic index referred to in the fourth sentence of section 1842(b)(3) of the Social Security Act [42 U.S.C. 1395u(b)(3)]."

DEVELOPMENT AND USE OF HCFA COMMON PROCEDURE CODING SYSTEM

Section 9331(d) of Pub. L. 99-509 provided that:

"(1) Not later than July 1, 1989, the Secretary of Health and Human Services (in this subsection referred to as the 'Secretary'), after public notice and opportunity for public comment and after consulation [consultation] with appropriate medical and other experts, shall group the procedure codes contained in any HCFA Common Procedure Coding System for payment purposes to minimize inappropriato increases in the intensity or volume of services provided as a result of coding distinctions which do not reflect substantial differences in the services rendered.

"(2) Not later than January 1, 1990, each carrier with which the Secretary has entered into a contract under section 1842 of the Social Security Act [42 U.S.C. 1395u] shall make payments under part B of title XVIII of such Act [42 U.S.C. 1395j et seq.] based on the grouping of procedure codes effected under paragraph (1)."

MEASURING CARRIER PERFORMANCE; CARRIER BONUSES FOR GOOD PERFORMANCE

Soction 9332(a)(2), (3) of Pub. L. 99-509 provided that:

"(2) MEASURING CARRIER PERFORMANCE.—The Secretary of Health and Human Services shall provide, in the standards and criteria established under section 1842(b)(2) of the Social Security Act [42 U.S.C. 1395u(b)(2)] for contracts under that section, a system to measure a carrier's performance of the responsibilities described in sections 1842(b)(3)(H) and 1842(h) of such Act.

"(3) CARRIER BONUSES FOR GOOD PERFORMANCE.—Of the amounts appropriated for administrative activities to carry out part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.], the Secretary of Health and Human Services shall provide payments, totaling 1 percent of the total payments to carriers for claims processing in any fiscal year, to carriers under section 1842 of such Act, to reward such carriers for their success in increasing the proportion of physicians in the carrier's service area who are participating physicians."

Section 9332(a)(4)(B), (C) of Pub. L. 99-509 provided that:

"(B) PERFORMANCE MEASURES.—The Secretary of Health and Human Services shall provide for the establishment of the standards and criteria required under paragraph (2) [set out as a note above] by not later than October 1, 1987, which shall apply to contracts as of October 1, 1987.

"(C) CARRIER BONUSES.—From the amounts appropriated for each fiscal year (beginning with fiscal year 1988), the Secretary of Health and Human Services shall first provide for payments of bonuses to carriers under paragraph (3) [set out as a note above] not later than April 1, 1988, to reflect performance of carriers during the enrollment period at the end of 1987."

REVIEW OF PROCEDURES

Section 9333(c) of Pub. L. 99-509 provided that: "Not later than October 1, 1987, the Secretary of Health and Human Services shall review the inherent reasonableness of the reasonable charges for at least 10 of the most costly procedures with respect to which payment is made under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.] (determined on the basis of the aggregate annual payments under such part with respect to each such procedure)."

RATIFICATION OF REGULATIONS

Section 9334(b) of Pub. L. 99-509 provided that:

"(1) IN GENERAL.—The Congress hereby ratifies the final regulation of the Secretary of Health and Human Services published on page 35693 of volume 51 of the Federal Register on October 7, 1986, relating to reasonable charge payment limits for anesthesia services under the medicare program.

"(2) PATIENT PROTECTIONS.—In the case of any reduction in the reasonable charge for physicians' services effected under the regulation described in paragraph (1), the provisions of section 1842(b)(10) of the Social Security Act [42 U.S.C. 1395u(b)(10)] (added by the amendment made by subsection (a)(3)) shall apply in the same manner and to the same extent as they apply to a reduction in the reasonable charge for a physicians' service effected under section 1842(b)(8) of such Act."

PAYMENT FOR PARENTERAL AND ENTERAL NUTRITION SUPPLIES AND EQUIPMENT

Section 9340 of Pub. L. 99-509 provided that: "The Secretary of Health and Human Services shall apply the sixth sentence of section 1842(b)(3) of the Social Security Act [42 U.S.C. 1395u(b)(3)] to payment—

"(1) for enteral nutrition nutrients, supplies, and equipment and parenteral nutrition supplies and equipment furnished on or after January 1, 1987, and

"(2) for parenteral nutrition nutrients furnished on or after October 1, 1987."

REPORTING OF OPD SERVICES USING HCPCS

Section 9343(g) of Pub. L. 99-509 provided that: "Not later than July 1, 1987, each fiscal intermediary which

processes claims under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.] shall require hospitals, as a condition of payment for outpatient hospital services under that part, to report claims for payment for such services under such part using a HCFA Common Procedure Coding System."

PERIOD FOR ENTERING INTO PARTICIPATION AGREEMENTS

Section 9301(b)(3) of Pub. L. 99-272 provided that: "The Secretary of Health and Human Services shall provide, during the month of April 1986, that physicians and suppliers may enter into an agreement under section 1842(h)(1) of the Social Security Act [42 U.S.C. 1395u(h)(1)] for the 8-month period beginning May 1, 1986, or terminate such an agreement previously entered into for fiscal year 1986. In the case of a physician or supplier who entered into such an agreement for fiscal year 1986, the physician or supplier shall be deemed to have entered into such agreement for such 8-month period and for each succeeding year unless the physician or supplier terminates such agreement before the beginning of the respective period. At the beginning of such 8-month period, the Secretary shall publish a new directory (described in section 1842(h)(4) of that Act, as redesignated by subsection (c)(3)(D) of this section [42 U.S.C. 1395u(h)(4)]) of participating physicians and suppliers."

TRANSITIONAL PROVISIONS FOR MEDICARE PART B PAYMENTS

Section 9301(d)(5) of Pub. L. 99-272 provided that: "Notwithstanding any other provision of law, for purposes of making payment under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.], customary and prevailing charges (and the lowest charges determined under the sixth sentence of section 1842(b)(3) of such Act [42 U.S.C. 1395u(b)(3)]) for items and services furnished during the period beginning on October 1, 1986, and ending on December 31, 1988, shall be determined on the same basis as for items and services furnished on September 30, 1986."

COMPUTATION OF CUSTOMARY CHARGES FOR CERTAIN FORMER HOSPITAL-COMPENSATED PHYSICIANS

Section 9304(b) of Pub. L. 99-272 provided that:

"(1) In applying section 1842(b) of the Social Security Act [42 U.S.C. 1395u(b)] to payment for physicians' services performed during the 8-month period beginning May 1, 1986, in the case of a physician who at anytime during the period beginning on October 31, 1982, and ending on January 31, 1985, was a hospital-compensated physician (as defined in paragraph (3)) but who, as of February 1, 1985, was no longer a hospital-compensated physician, the physician's customary charges shall—

"(A) be based upon the physician's actual charges billed during the 12-month period ending on March 31, 1985, and

"(B) in the case of a physician who was not a participating physician (as defined in section 1842(h)(1) of the Social Security Act) on September 30, 1985, and who is not such a physician on May 1, 1986, be deflated (to take into account the legislative freeze on actual charges for nonparticipating physicians' services) by multiplying the physician's customary charges by .85.

"(2) In applying section 1842(b) of the Social Security Act [42 U.S.C. 1395u(b)] to payment for physicians' services performed during the 8-month period beginning May 1, 1986, in the case of a physician who during the period beginning on February 1, 1985, and ending on December 31, 1986, changes from being a hospital-compensated physician to not being a hospital-compensated physician, the physician's customary charges shall be determined in the same manner as if the physician were considered to be a new physician.

"(3) In this subsection, the term 'hospital-compensated physician' means, with respect to services furnished to patients of a hospital, a physician who is compensated by the hospital for the furnishing of physicians' services for which payment may be made under this part."

EXTENSION OF MEDICARE PHYSICIAN PAYMENT PROVISIONS

Period of 15 months referred to in subsec. (j)(1) of this section for monitoring the charges of nonparticipating physicians to be deemed to include the period Oct. 1, 1985, to Mar. 14, 1986, see section 5(b) of Pub. L. 99-107, set out as a note under section 1395ww of this title.

SIMPLIFICATION OF PROCEDURES WITH RESPECT TO CLAIMS AND PAYMENTS FOR CLINICAL DIAGNOSTIC LABORATORY TESTS

Section 2303(h) of Pub. L. 98-369 provided that: "The Secretary of Health and Human Services shall simplify the procedures under section 1842 of the Social Security Act [42 U.S.C. 1395u] with respect to claims and payments for clinical diagnostic laboratory tests so as to reduce unnecessary paperwork while assuring that sufficient information is supplied to identify instances of fraud and abuse."

STUDY OF AMOUNTS BILLED FOR PHYSICIAN SERVICES AND PAID BY CARRIERS UNDER SUBSECTION (b)(7) OF THIS SECTION; REPORT TO CONGRESS

Section 2307(c) of Pub. L. 98-369 provided that: "The Comptroller General shall conduct a study of the amounts billed for physician services and paid by carriers under section 1842(b)(7) of the Social Security Act [42 U.S.C. 1395u(b)(7)] to determine whether such payments have been made only where the physician satisfies the requirements of section 1842(b)(7)(A)(i) of such Act. The Comptroller General shall submit to the Committees on Ways and Means and on Energy and Commerce of the House of Representatives and to the Committee on Finance of the Senate a report on the results of such study not later than 18 months after the date of the enactment of this Act [July 18, 1984]."

REPLACEMENT OF AGENCY, ORGANIZATION, OR CARRIER PROCESSING MEDICARE CLAIMS; NUMBER OF AGREEMENTS AND CONTRACTS AUTHORIZED FOR FISCAL YEARS 1985 AND 1986

For provision authorizing two agreements under section 1395h of this title and two contracts under this section for replacement of an agency, organization, or carrier in the lowest 20th percentile, see section 2326(a) of Pub. L. 98-369, set out as a note under 1395h of this title.

REPORT ON REIMBURSEMENT OF CLINICAL LABORATORIES

Section 918(a)(3) of Pub. L. 96-499 provided that not later than 24 months after an effective date (not later than Apr. 1, 1981) which was to have been prescribed by the Secretary of Health and Human Services, the Secretary was to report to the Congress (A) the proportion of bills and requests for payment submitted (during the 18-month period beginning on such effective date) under this subchapter for laboratory tests which did not identify who performed the tests, (B) the proportion of bills and requests for payment submitted during such period for laboratory tests with respect to which the amount paid under this subchapter was less than the amount that would otherwise have been payable in the absence of subsec. (h) of this section, (C) with respect to requests for payment described in subparagraph (B) which were submitted by patients, the average additional cost per laboratory test to patients resulting from reductions in payment that would otherwise have been made for such tests in the absence of such subsec. (h), and (D) with respect to bills described in subparagraph (B) which were sub-

mitted by physicians, the average reduction in payment per laboratory test to physicians resulting from the application of such subsec. (h).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 254n, 300cc-15, 1320a-3, 1320a-7a, 1320c-2, 1320c-3, 1320c-13, 1395k, 1395*l*, 1395t, 1395v, 1395w-1, 1395y, 1395cc, 1395mm, 1395nn, 1395pp, 1395vv, 1396m of this title; title 2 section 906.

§ 1395v. Agreements with States

[*See main edition for text of (a) to (c)*]

(d) Monthly premiums; coverage periods

In the case of any individual enrolled pursuant to this section—

(1) the monthly premium to be paid by the State shall be determined under section 1395r of this title (without any increase under subsection (b) thereof);

[*See main edition for text of (2)*]

(3) his coverage period attributable to the agreement with the State under this section shall end on the last day of whichever of the following first occurs:

[*See main edition for text of (A)*]

(B) the month preceding the first month for which he becomes entitled to monthly benefits under subchapter II of this chapter or to an annuity or pension under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.].

[*See main edition for text of (e) to (h)*]

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, § 606(a)(3)(E), 97 Stat. 171; July 18, 1984, Pub. L. 98-369, div. B, title III, § 2354(b)(15), 98 Stat. 1101.)

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in subsecs. (b)(2) and (f), is classified to section 601 et seq. of this title.

The Railroad Retirement Act of 1974, referred to in subsec. (d)(3)(B), is title I of Pub. L. 93-444, Oct. 16, 1974, 88 Stat. 1305, as amended, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For complete classification of this Act to the Code, see section 231t of Title 45 and Tables.

AMENDMENTS

1984—Subsec. (d)(3)(B). Pub. L. 98-369 substituted "1974" for "1937".

1983—Subsec. (d)(1). Pub. L. 98-21 substituted "without any increase under subsection (b) thereof" for "without any increase under subsection (c) thereof".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT; TRANSITIONAL RULE

Amendment by Pub. L. 98-21 applicable to premiums for months beginning with January 1984, but for months after June 1983 and before January 1984, the monthly premium for June 1983 shall apply to individuals enrolled under parts A and B of this subchapter, see section 606(c) of Pub. L. 98-21, set out as a note under section 1395r of this title.

§ 1395w. Appropriations to cover Government contributions and contingency reserve

(a) There are authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, to the Federal Supplementary Medical Insurance Trust Fund—

(1)(A) a Government contribution equal to the aggregate premiums payable for a month for enrollees age 65 and over under this part and deposited in the Trust Fund, multiplied by the ratio of—

(i) twice the dollar amount of the actuarially adequate rate per enrollee age 65 and over as determined under section 1395r(a)(1) of this title for such month minus the dollar amount of the premium per enrollee for such month, as determined under section 1395r(a)(3) or 1395r(e) of this title, as the case may be, to

(ii) the dollar amount of the premium per enrollee for such month, plus

(B) a Government contribution equal to the aggregate premiums payable for a month for enrollees under age 65 under this part and deposited in the Trust Fund, multiplied by the ratio of—

(i) twice the dollar amount of the actuarially adequate rate per enrollee under age 65 as determined under section 1395r(a)(4) of this title for such month minus the dollar amount of the premium per enrollee for such month, as determined under section 1395r(a)(3) or 1395r(e) of this title, as the case may be, to

(ii) the dollar amount of the premium per enrollee for such month; plus

[*See main edition for text of (2); (b)*]

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, § 606(a)(3)(F), (G), 97 Stat. 171; July 18, 1984, Pub. L. 98-369, div. B, title III, § 2354(b)(16), 98 Stat. 1101.)

AMENDMENTS

1984—Subsec. (a)(1)(B)(ii). Pub. L. 98-369 substituted "; plus" for a period.

1983—Subsec. (a)(1)(A)(i). Pub. L. 98-21, § 606(a)(3)(F), substituted "section 1395r(a)(1)" for "section 1395r(c)(1)" and "section 1395r(a)(3) or 1395r(e)" for "section 1395r(c)(3) or 1395r(g)".

Subsec. (a)(1)(B)(i). Pub. L. 98-21, § 606(a)(3)(G), substituted "1395r(a)(4)" for "1395r(c)(4)" and "1395r(a)(3) or 1395r(e)" for "1395r(c)(3) or 1395r(g)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT; TRANSITIONAL RULE

Amendment by Pub. L. 98-21 applicable to premiums for months beginning with January 1984, but for months after June 1983 and before January 1984, the amount of Government contributions under subsec. (a)(1) of this section shall be computed with the actuarially adequate rate which would have been in effect but for the amendments made by this section and using the amount of the premium in effect for June 1983, see section 606(c) of Pub. L. 98-21, set out as a note under section 1395r of this title.

§ 1395w-1. Physician Payment Review Commission

(a) Establishment; membership; term of office

(1) The Director of the Congressional Office of Technology Assessment (hereinafter in this section referred to as the "Director" and the "Office", respectively) shall provide for the appointment of a Physician Payment Review Commission (hereinafter in this section referred to as the "Commission"), to be composed of individuals with expertise in the provision and financing of physicians' services appointed by the Director (without regard to the provisions of title 5 governing appointments in the competitive service).

(2) The Commission shall consist of 13 individuals. Members of the Commission shall first be appointed no later than May 1, 1986, for a term of three years, except that the Director may provide initially for such shorter terms as will insure[1] that (on a continuing basis) the terms of no more than four members expire in any one year.

(3) The membership of the Commission shall include physicians, other health professionals, individuals skilled in the conduct and interpretation of biomedical, health services, and health economics research, and representatives of consumers and the elderly. The Director shall seek nominations from a wide range of groups, including—

(A) national organizations representing physicians, including medical specialty organizations,

(B) organizations representing the elderly and consumers,

(C) national organizations representing medical schools,

(D) national organizations representing hospitals, including teaching hospitals, and

(E) national organizations representing health benefits programs.

(b) Recommendations to Congress

(1) The Commission shall make recommendations to the Congress, not later than March 1 of each year (beginning with 1987), regarding adjustments to the reasonable charge levels for physicians' services recognized under section 1395u(b) of this title and changes in the methodology for determining the rates of payment, and for making payment, for physicians' services under this subchapter and other items and services under this part.

(2) In making its recommendations, the Commission shall—

(A) consider, and make recommendations on the feasibility and desirability of reducing, the differences in payment amounts for physicians' services under this part which are based on differences in geographic location or specialty;

(B) review the input costs (including time, professional skills, and risks) associated with the provision of different physicians' services;

(C) identify those charges recognized as reasonable under section 1395u(b) of this title which are significantly out-of-line, based on the considerations of subparagraphs (A) and (B);

(D) assess the likely impact of different adjustments in payment rates, particularly their impact on physician participation in the participation program established under section 1395u(h) of this title and on beneficiary access to necessary physicians' services;

(E) make recommendations on ways to increase physician participation in that participation program and the acceptance of payment under this part on an assignment-related basis;

(F) make recommendations respecting the advisability and feasibility of making changes in the payment system for physicians' services under this part based on (i) the Secretary's study under section 603(b)(2) of the Social Security Amendments of 1983 (relating to payments for physicians' services furnished to hospital inpatients on the basis of diagnosis-related groups) and (ii) the Office's report under section 2309 of the Deficit Reduction Act of 1984 (relating to physician reimbursement under this part);

(G) identify those procedures, involving the use of assistants at surgery, for which payment for those assistants should not be made under this subchapter without prior approval; and

(H) identify those procedures for which an opinion of a second physician should be required before payment is made under this subchapter.

(3) The Commission also shall advise and make recommendations to the Secretary respecting the development of the relative value scale under subsection (e) of this section and respecting the index and the adjustment described in subsection (e)(4)(A) of this section.

(c) Applicability of provisions relating to Prospective Payment Assessment Commission; collection and assessment of information

(1) The following provisions of section 1395ww(e)(6) of this title shall apply to the Commission in the same manner as they apply to the Prospective Payment Assessment Commission:

(A) Subparagraph (C) (relating to staffing and administration generally).

(B) Subparagraph (D) (relating to compensation of members).

(C) Subparagraph (F) (relating to access to information).

(D) Subparagraph (G) (relating to reports and use of funds).

(E) Subparagraph (H) (relating to periodic GAO audits).

[1] So in original. Probably should be "ensure".

(F) Subparagraph (J) (relating to requests for appropriations).

(2) In order to carry out its functions, the Commission shall collect and assess information on medical and surgical procedures and services, including information on regional variations of medical practice. In collecting and assessing information, the Commission shall—

(A) utilize existing information, both published and unpublished, where possible, collected and assessed either by its own staff or under other arrangements made in accordance with this section,

(B) carry out, or award grants or contracts for, original research and experimentation, where existing information is inadequate for the development of useful and valid guidelines by the Commission, and

(C) adopt procedures allowing any interested party to submit information with respect to physicians' services (including new practices, such as the use of new technologies and treatment modalities), which information the Commission shall consider in making reports and recommendations to the Secretary and Congress.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section. Such sums shall be payable from the Federal Supplementary Medical Insurance Trust Fund.

(e) Relative value scale for physicians' services

(1) The Secretary shall develop a relative value scale that establishes a numerical relationship among the various physicians' services for which payment may be made under this part or under State plans approved under subchapter XIX of this chapter.

(2) In developing the scale, the Secretary shall consider among other items—

(A) the report of the Office of Technology Assessment under section 2309 of the Deficit Reduction Act of 1984,

(B) the recommendations of the Physician Payment Review Commission under subsection (b)(3) of this section, and

(C) factors with respect to the input costs for furnishing particular physicians' services, such as—

(i) the differences in costs of furnishing services in different settings,

(ii) the differences in skill levels and training required to perform the services, and

(iii) the time required, and risk involved, in furnishing different services.

(3) The Secretary shall complete the development of the relative value scale under this section, and report to Congress on the development, not later than July 1, 1989. The report shall include recommendations for the application of the scale to payment for physicians' services furnished under this part after December 31, 1989.

(4)(A) In making recommendations with respect to the application of the relative value scale for purposes of establishing a fee schedule, the Secretary shall—

(i) develop and assess an appropriate index to be used for making adjustments to reflect justifiable differences in the costs of practice based upon geographic location without exacerbating the geographic maldistribution of physicians, and

(ii) assess the advisability and feasibility of developing an appropriate adjustment to assist in attracting and retaining physicians in medically underserved areas.

(B) In carrying out the requirements of subparagraph (A), the Secretary shall take into consideration the recommendations made by the Physician Payment Review Commission.

(C)(i) The Secretary shall develop an interim index under subparagraph (A)(i) prior to January 1, 1988, based upon the most accurate and recent data that are available with respect to the costs of practice.

(ii) The Secretary shall collect data with respect to the costs of practice (including, but not limited to, data on nonphysician personnel costs, malpractice insurance costs, and commercial rents) for the purpose of refining the index under subparagraph (A)(i) prior to December 31, 1989, and periodically updating the index thereafter.

(D) In conjunction with developing an index under subparagraph (A), the Secretary shall conduct a study of the advisability of redefining the localities designated by carriers for payment purposes.

(Aug. 14, 1935, ch. 531, title XVIII, § 1845, as added and amended Apr. 7, 1986, Pub. L. 99-272, title IX, § 9305, 100 Stat. 190; Oct. 21, 1986, Pub. L. 99-509, title IX, §§ 9331(e), 9344(a)(1), 100 Stat. 2021, 2042.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (a)(1), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

Section 603(b)(2) of the Social Security Amendments of 1983, referred to in subsec. (b)(2)(F), is section 603(b)(2) of Pub. L. 98-21, title VI, Apr. 20, 1983, 97 Stat. 167, which is set out as a note under section 1395b-1 of this title.

Section 2309 of the Deficit Reduction Act of 1984, referred to in subsecs. (b)(2)(F) and (e)(2)(A), is section 2309 of Pub. L. 98-369, div. B, title III, July 18, 1984, 98 Stat. 1074, which is set out as a note under section 1395l of this title.

AMENDMENTS

1986—Subsec. (a)(2). Pub. L. 99-509, § 9344(a)(1), substituted "13 individuals" for "11 individuals".

Subsec. (b)(3). Pub. L. 99-509, § 9331(e)(2), inserted "and respecting the index and adjustment described in subsection (e)(4)(A) of this section" after "subsection (e) of this section".

Subsec. (e). Pub. L. 99-272, § 9305(b), added subsec. (e).

Subsec. (e)(3). Pub. L. 99-509, § 9331(e)(3), substituted "July 1, 1989" for "July 1, 1987", and "after December 31, 1989" for "on or after January 1, 1988".

Subsec. (e)(4). Pub. L. 99-509, § 9331(e)(1), added par. (4).

APPOINTMENT OF ADDITIONAL MEMBERS

Section 9344(a)(2) of Pub. L. 99-509 provided that: "The Director of the Congressional Office of Technology Assessment shall appoint the two additional mem-

bers of the Physician Payment Review Commission, as required by the amendment made by paragraph (1) [amending this section], no later than 60 days after the date of the enactment of this Act [Oct. 21, 1986], for terms of 3 years, except that the Director may provide initially for such terms as will insure [ensure] that (on a continuing basis) the terms of no more than five members expire in any one year."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395*l*, 1395u of this title.

PART C—MISCELLANEOUS PROVISIONS

§ 1395x. Definitions

For purposes of this subchapter—

[*See main edition for text of (a)*]

(h) Inpatient hospital services

The term "inpatient hospital services" means the following items and services furnished to an inpatient of a hospital and (except as provided in paragraph (3)) by the hospital—

[*See main edition for text of (1) to (3)*]

excluding, however—

(4) medical or surgical services provided by a physician, resident, or intern, anesthesia services provided by a certified certified [1] registered nurse anesthetist; and

[*See main edition for text of (5) to (7); (c)*]

(d) Repealed. Pub. L. 98-369, div. B, title III, § 2335(b)(1), July 18, 1984, 98 Stat. 1090

(e) Hospital

The term "hospital" (except for purposes of sections 1395f(d), 1395f(f), and 1395n(b) of this title, subsection (a)(2) of this section, paragraph (7) of this subsection, and subsection (i) of this section) means an institution which—

[*See main edition for text of (1) to (5)*]

(6)(A) has in effect a hospital utilization review plan which meets the requirements of subsection (k) of this section and (B) has in place a discharge planning process that meets the requirements of subsection (ee) of this section;

[*See main edition for text of (7) to (9)*]

For purposes of subsection (a)(2) of this section, such term includes any institution which meets the requirements of paragraph (1) of this subsection. For purposes of sections 1395f(d) and 1395n(b) of this title (including determination of whether an individual received inpatient hospital services or diagnostic services for purposes of such sections), section 1395f(f)(2) of this title, and subsection (i) of this section, such term includes any institution which (i) meets the requirements of paragraphs (5) and (7) of this subsection, (ii) is not primarily engaged in providing the services described in subsection (j)(1)(A) of this section and (iii) is primarily engaged in providing, by or under the supervision of individuals referred to in paragraph (1) of subsection (r) of this section, to inpatients diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. For purposes of section 1395f(f)(1) of this title, such term includes an institution which (i) is a hospital for purposes of sections 1395f(d), 1395f(f)(2), and 1395n(b) of this title and (ii) is accredited by the Joint Commission on Accreditation of Hospitals, or is accredited by or approved by a program of the country in which such institution is located if the Secretary finds the accreditation or comparable approval standards of such program to be essentially equivalent to those of the Joint Commission on Accreditation of Hospitals. Notwithstanding the preceding provisions of this subsection, such term shall not, except for purposes of subsection (a)(2) of this section, include any institution which is primarily for the care and treatment of mental diseases unless it is a psychiatric hospital (as defined in subsection (f) of this section). The term "hospital" also includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts, but only with respect to items and services ordinarily furnished by such institution to inpatients, and payment may be made with respect to services provided by or in such an institution only to such extent and under such conditions, limitations, and requirements (in addition to or in lieu of the conditions, limitations, and requirements otherwise applicable) as may be provided in regulations. For provisions deeming certain requirements of this subsection to be met in the case of accredited institutions, see section 1395bb of this title. The term "hospital" also includes a facility of fifty beds or less which is located in an area determined by the Secretary to meet the definition relating to a rural area described in subparagraph (A) of paragraph (5) of this subsection and which meets the other requirements of this subsection, except that—

[*See main edition for text of (A) to (C)*]

(f) Psychiatric hospital

The term "psychiatric hospital" means an institution which—

[*See main edition for text of (1) and (2)*]

(3) maintains clinical records on all patients and maintains such records as the Secretary finds to be necessary to determine the degree and intensity of the treatment provided to individuals entitled to hospital insurance benefits under part A of this subchapter; and

(4) meets such staffing requirements as the Secretary finds necessary for the institution to carry out an active program of treatment for individuals who are furnished services in the institution.

In the case of an institution which satisfies paragraphs (1) and (2) of the preceding sentence and which contains a distinct part which also satisfies paragraphs (3) and (4) of such sen-

[1] So in original.

tence, such distinct part shall be considered to be a "psychiatric hospital".

(g) Outpatient occupational therapy services

The term "outpatient occupational therapy services" has the meaning given the term "outpatient physical therapy services" in subsection (p) of this section, except that "occupational" shall be substituted for "physical" each place it appears therein.

[*See main edition for text of (h) and (i)*]

(j) Skilled nursing facility

The term "skilled nursing facility" means (except for purposes of subsection (a)(2) of this section) an institution (or a distinct part of an institution) which has in effect a transfer agreement (meeting the requirements of subsection (*l*) of this section) with one or more hospitals having agreements in effect under section 1395cc of this title and which—

[*See main edition for text of (1)*]

(2) has policies, which are developed with the advice of (and with provision for revlew of such policies from time to time by) a group of professional personnel, including one or more physicians and one or more registered professional nurses, to govern the skilled nursing care and related medical or other services it provides;

[*See main edition for text of (3) to (12)*]

(13) meets such provisions of such edition (as is specified by the Secretary in regulations) of the Life Safety Code of the National Fire Protection Association as are applicable to nursing homes; except that 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 an institution, but only if such waiver will not adversely affect the health and safety of the patients; except that the provisions of such Code shall not apply in any Stato if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects patients in nursing facilities;

[*See main edition for text of (14) and (15)*]

except that such term shall not (other than for purposes of subsection (a)(2) of this section) include any institution which is primarily for the care and treatment of mental diseases. For purposes of subsection (a)(2) of this section, such term includes any institution which meets the requirements of paragraph (1) of this subsection. The term "skilled nursing facility" also includes an institution described in paragraph (1) of subsection (y) of this section, to the extent and subject to the limitations provided in such subsection. To the extent that paragraph (6) of this subsection may be deemed to require that any skilled nursing facility engage the services of a registered professional nurse for more than 40 hours a week, the Secretary is authorized to walve such requirement if he finds that—

[*See main edition for text of (A) to (C); (k) and (l)*]

(m) Home health services

The term "home health services" means the following items and services furnished to an individual, who is under the care of a physician, by a home health agency or by others under arrangements with them made by such agency, under a plan (for furnishing such items and services to such individual) established and periodically reviewed by a physician, which items and services are, except as provided in paragraph (7), provided on a visiting basis in a place of residence used as such individual's home—

[*See main edition for text of (1) to (4)*]

(5) medical supplies (other than drugs and biologicals) and durable medical equipment, while under such a plan;

[*See main edition for text of (6) and (7)*]

excluding, however, any item or service if it would not be included under subsection (b) of this section if furnished to an inpatient of a hospital.

(n) Durable medical equipment

The term "durable medical equipment" includes iron lungs, oxygen tents, hospital beds, and wheelchairs (which may include a power-operated vehicle that may be appropriately used as a wheelchair, but only where the use of such a vehicle is determined to be necessary on the basis of the individual's medical and physical condition and the vehicle meets such safety requirements as the Secretary may prescribe) used in the patient's home (including an institution used as his home other than an institution that meets the requirements of subsection (e)(1) or (j)(1) of this section), whether furnished on a rental basis or purchased.

[*See main edition for text of (o)*]

(p) Outpatient physical therapy services

The term "outpatient physical therapy services" means physical therapy services furnished by a provider of services, a clinic, rehabilitation agency, or a public health agency, or by others under an arrangement with, and under the supervision of, such provider, clinic, rehabilitation agency, or public health agency to an individual as an outpatient—

(1) who is under the care of a physician (as defined in paragraph (1) or (3) of subsection (r) of this section), and

(2) with respect to whom a plan prescribing the type, amount, and duration of physical therapy services that are to be furnished such individual has been established by a physician (as so defined) or by a qualified physical therapist and is periodically reviewed by a physician (as so defined);

excluding, however—

[*See main edition for text of (3) and (4)*]

The term "outpatient physical therapy services" also includes physical therapy services furnished an individual by a physical therapist (in his office or in such individual's home) who meets licensing and other standards prescribed

by the Secretary in regulations, otherwise than under an arrangement with and under the supervision of a provider of services, clinic, rehabilitation ageney, or public health agency, if the furnishing of such services meets such conditions relating to health and safety as the Secretary may find necessary. In addition, such term includes physical therapy services which meet the requirements of the first sentence of this subsection except that they are furnished to an individual as an inpatient of a hospital or extended care facility. The term "outpatient physical therapy services" also includes speech pathology services furnished by a provider of services, a clinic, rehabilitation agency, or by a public health agency, or by others under an arrangement with, and under the supervision of, such provider, clinic, rehabilitation agency, or public health agency to an individual as an outpatient, subject to the conditions prescribed in this subsection.

[*See main edition for text of* (q)]

(r) Physician

The term "physician", when used in connection with the performance of any function or action, means (1) a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he performs such function or action (including a physician within the meaning of section 1301(a)(7) of this title), (2) a doctor of dental surgery or of dental medicine who is legally authorized to practice dentistry by tbe State in which he performs such function and who is acting within the scope of his license when he performs such functions, (3) a doctor of podiatric medicine for the purposes of subsection (s) of this section but only with respect to functions which he is legally authorized to perform as such by the Stato in whicb he performs them; and for the purposes of subsections (k), (m), and (p)(1) of this section and sections 1395f(a), 1395k(a)(2)(F)(ii), and 1395n of this title but only if his performance of functions under subsections (k), (m), and (p)(1) of this section and sections 1395f(a), 1395k(a)(2)(F)(ii), and I395n of this title is consistent with the policy of the institution or agency with respect to which he performs them and with the functions which he is legally authorized to perform, (4) a doctor of optometry, but only with respect to the provision of items or services described in subsection (s) of this section which he is legally authorized to perform as a doctor of optometry by the State in which he performs them, or (5) a chiropractor who is licensed as such by the State (or in a State which does not license chiropractors as such, is legally authorized to perform the services of a chiropractor in the jurisdiction in whicb he performs such services), and who meets uniform minimum standards promulgated by the Secretary, but only for the purpose of subsections (s)(1) and (s)(2)(A) of this section and only with respect to treatment by means of manual manipulation of the spine (to correct a subluxation demonstrated by X-ray to exist) which he is legally authorized to perform by the State or jurisdiction in which such treatment is provided. For the purposes of section 1395y(a)(4) of this title and subject to the limitations and conditions provided in the previous sentence, such term includes a doctor of one of the arts, specified in such previous sentence, legally authorized to practice such art in the country in which the inpatient hospital services (referred to in such section 1395y(a)(4) of this title) are furnished.

(s) Medical and other health services

The term "medical and other health services" means any of the following items or services:

(1) physicians' services;

(2) [*See main edition for text of* (A) *to* (C)]

(D) outpatient physical therapy services and outpatient occupational therapy services;

[*See main edition for text of* (E) *and* (F)]

(G) antigens (subject to quantity limitations prescribed in regulations by the Secretary) prepared by a physician, as defined in subsection (r)(1) of this section, for a particular patient, including antigens so prepared which are forwarded to another qualified person (including a rural health clinic) for administration to such patient, from time to time, by or under the supervision of another such physician;

(H)(i) services furnished pursuant to a contract under section 1395mm of this title to a member of an eligible organization by a physician assistant or by a nurse practitioner (as defined in subsection (aa)(3) of this section) and such services and supplies furnished as an incident to his service to such a member as would otherwise be covered under this part if furnished by a physician or as an incident to a physician's service; and

(ii) services furnished pursuant to a risk-sharing contract under section 1395mm(g) of this title to a member of an eligible organization by a clinical psychologist (as defined by the Secretary), and such services and supplies furnished as an incident to his services to such a member as would otherwise be covered under this part if furnished by a physician or as an incident to a physician's service;

(I) blood clotting factors, for hemophilia patients competent to use such factors to control bleeding without medical or other supervision, and items related to the administration of such factors, subject to utilization controls deemed necessary by the Secretary for the efficient use of such factors;

(J) immunosuppressive drugs furnished, to an individual who receives an organ transplant for which payment is made under this subchapter, within 1 year after the date of the transplant procedure; and

(K)(i) services which would be physicians' services if furnished by a physician (as defined in subsection (r)(1) of this section) and which are performed by a physician assistant (as defined in subsection (aa)(3) of this section) under the supervision of a physician (as so defined) in a hospital, skilled nursing facility, or intermediate care facility (as defined in section 1396d(c) of this title) or as an assistant at surgery and which the physician assistant is legally authorized to perform by the

State in which the services are performed, and

(ii) such services and supplies furnished as an incident to such services as would be covered under subparagraph (A) if furnished as an incident to a physician's professional service;

[*See main edition for text of (3) to (5)*]

(6) durable medical equipment;

[*See main edition for text of (7) and (8)*]

(9) leg, arm, back, and neck braces, and artificial legs, arms, and eyes, including replacements if required because of a change in the patient's physical condition;

(10)(A) pneumococcal vaccine and its administration; and

(B) hepatitis B vaccine and its administration, furnished to an individual who is at high or intermediate risk of contracting hepatitis B (as determined by the Secretary under regulations); and

(11) services of a certified registered nurse anesthetist (as defined in subsection (bb) of this section).

No diagnostic tests performed in any laboratory which is independent of a physician's office, a rural health clinic, or a hospital (which, for purposes of this sentence, means an institution considered a hospital for purposes of section 1395f(d) of this title) shall be included within paragraph (3) unless such laboratory—

(12) if situated in any State in which State or applicable local law provides for licensing of establishments of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State or locality responsible for licensing establishments of this nature, as meeting the standards established for such licensing; and

(13) meets such other conditions relating to the health and safety of individuals with respect to whom such tests are performed as the Secretary may find necessary.

There shall be excluded from the diagnostic services specified in paragraph (2)(C) any item or service (except services referred to in paragraph (1)) which—

(14) would not be included under subsection (b) of this section if it were furnished to an inpatient of a hospital; or

(15) is furnished under arrangements referred to in such paragraph (2)(C) unless furnished in the hospital or in other facilities operated by or under the supervision of the hospital or its organized medical staff.

None of the items and services referred to in the preceding paragraphs (other than paragraphs (1) and (2)(A)) of this subsection which are furnished to a patient of an institution which meets the definition of a hospital for purposes of section 1395f(d) of this title shall be included unless such other conditions are met as the Secretary may find necessary relating to health and safety of individuals with respect to whom such items and services are furnished.

[*See main edition for text of (t)*]

(u) Provider of services

The term "provider of services" means a hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program, or, for purposes of section 1395f(g) and section 1395n(e) of this title, a fund.

(v) Reasonable costs

(1)(A) The reasonable cost of any services shall be the cost actually incurred, excluding therefrom any part of incurred cost found to be unnecessary in the efficient delivery of needed health services, and shall be determined in accordance with regulations establishing the method or methods to be used, and the items to be included, in determining such costs for various types or classes of institutions, agencies, and services; except that in any case te which paragraph (2) or (3) applies, the amount of the payment determined under such paragraph with respect to the services involved shall be considered the reasonable cost of such services. In prescribing the regulations referred to in the preceding sentence, the Secretary shall consider, among other things, the principles generally applied by national organizations or established prepayment organizations (which have developed such principles) in computing the amount of payment, to be made by persons other than the recipients of services, to providers of services on account of services furnished to such recipients by such providers. Such regulations may provide for determination of the costs of services on a per diem, per unit, per capita, or other basis, may provide for using different methods in different circumstances, may provide for the use of estimates of costs of particular items or services, may provide for the establishment of limits on the direct or indirect overall incurred costs or incurred costs of specific items or services or groups of items or services to be recognized as reasonable based on estimates of the costs necessary in the efficient delivery of needed health services to individuals covered by the insurance programs established under this subchapter, and may provide for the use of charges or a percentage of charges where this method reasonably reflects the costs. Such regulations shall (i) take into account both direct and indirect costs of providers of services (excluding therefrom any such costs, including standby costs, which are determined in accordance with regulations to be unnecessary in the efficient delivery of services covered by the insurance programs established under this subchapter) in order that, under the methods of determining costs, the necessary costs of efficiently delivering covered services to individuals covered by the insurance programs established by this subchapter will not be borne by individuals not so covered, and the costs with respect to individuals not so covered will not be borne by such insurance programs, and (ii) provide for the making of suitable retroactive corrective adjustments where, for a provider of services for any fiscal period, the aggregate reimbursement produced by the methods of determining costs proves to be either inadequate or excessive.

(B) Such regulations in the case of extended care services furnished by proprietary facilities shall include provision for specific recoguition of a reasonable return on equity capital, including necessary working capital, invested in the facility and nsed in the furnishing of such services, in lieu of other allowances to the extent that they reflect similar items. The rate of return recognized pursuant to the preceding sentence for determining the reasonable cost of any services furnished in any cost reporting period shall be equal to the average of the rates of interest, for each of the months any part of which is included in the period, on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.

(C) Where a hospital has an arrangement with a medical school under which the faculty of such school provides services at such hospital, an amount not in excess of the reasonable cost of such services to the medical school shall be included in determining the reasonable cost to the hospital of furnishing services—

(i) for which payment may be made under part A of this subchapter, but only if—

[*See main edition for text of (I) and (II), (ii)*]

(D) Where (i) physicians furnish services which are either inpatient hospital services (including services in conjunction with the teaching programs of such hospital) by reason of paragraph (7) of subsection (b) of this section or for which entitlement exists by reason of clause (II) of section 1395k(a)(2)(B)(i) of this title, and (ii) such hospital (or medical school under arrangement with such hospital) incurs no actual cost in the furnishing of such services, the reasonable cost of such services shall (under regulations of the Secretary) be deemed to be the cost such hospital or medical school would have incurred had it paid a salary to such physicians rendering such services approximately equivalent to the average salary paid to all physicians employed by such hospital (or if such employment does not exist, or is minimal in such hospital, by similar hospitals in a geographic area of sufficient size to assure reasonable inclusion of sufficient physicians in development of such average salary).

(E) Such regulations may, in the case of skilled nursing facilities in any State, provide for the use of rates, developed by the State in which such facilities are located, for the payment of the cost of skilled nursing facility services furnished under the State's plan approved under subchapter XIX of this chapter (and such rates may be increased by the Secretary on a class or size of institution or on a geographical basis by a percentage factor not in excess of 10 percent to take into account determinable items or services or other requirements under this subchapter not otherwise included in the computation of such State rates), if the Secretary finds that such rates are reasonably related to (but not necessarily limited to) analyses undertaken by such State of costs of care in comparable facilities in such Stato.

[*See main edition for text of (F)*]

(G)(i) In any case in which a hospital provides inpatient services to an individual that would constitute post-hospital extended care services if provided by a skilled nursing facility and a quality control and peer review organization (or, in the absence of such a qualified organization, the Secretary or such agent as the Secretary may designate) determines that inpatient hospital services for the individual are not medically necessary but post-hospital extended care services for the individual are medically necessary and such extended care services are not otherwise available to the individual (as determined in accordance with criteria established by the Secretary) at the time of such determination, payment for such services provided to the individual shall continue to be made under this subchapter at the payment rate described in clause (ii) during the period in which—

[*See main edition for text of (I) to (III)*]

except that if the Secretary determines that there is not an excess of hospital beds in such hospital and (subject to clause (iv)) there is not an excess of hospital beds in the area of such hospital, such payment shall be made (during such period) on the basis of the amount otherwise payable under part A with respect to inpatient hospital services.

[*See main edition for text of (ii) to (iv), (H)*]

(I) In determining such reasonable cost, the Secretary may not include any costs incurred by a provider with respect to any services furnished in connection with matters for which payment may be made under this subchapter and furnished pursuant to a contract between the provider and any of its subcontractors which is entered into after December 5, 1980, and the value or cost of which is $10,000 or more over a twelve-month period unless the contract contains a clause to the effect that—

(i) until the expiration of four years after the furnishing of such services pursuant to such contract, the subcontractor shall make available, upon written request by the Secretary, or upon request by the Comptroller General, or any of their duly authorized representatives, the contract, and books, documents and records of such subcontractor that are necessary to certify the nature and extent of such costs, and

(ii) if the subcontractor carries out any of the duties of the contract through a subcontract, with a value or cost of $10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request by the Secretary, or upon request by the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

The Secretary shall prescribe in regulation [2] criteria and procedures which the Secretary shall

[2] So in original. Probably should be "regulations".

use in obtaining access to books, documents, and records under clauses required in contracts and subcontracts under this subparagraph.

[*See main edition for text of (J)*]

(K)(i) The Secretary shall issue regulations that provide, to the extent feasible, for the establishment of limitations on the amount of any costs or charges that shall be considered reasonable with respect to services provided on an outpatient basis by hospitals (other than bona fide emergency services as defined in clause (ii)) or clinics (other than rural health clinics), which are reimbursed on a cost basis or on the basis of cost related charges, and by physicians utilizing such outpatient facilities. Such limitations shall be reasonably related to the charges in the same area for similar services provided in physicians' offices. Such regulations shall provide for exceptions to such limitations in cases where similar services are not generally available in physicians' offices in the area to individuals entitled to benefits under this subchapter.

(ii) For purposes of clause (i), the term "bona fide emergency services" means services provided in a hospital emergency room after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

(I) placing the patient's health in serious jeopardy;

(II) serious impairment to bodily functions; or

(III) serious dysfunction of any bodily organ or part.

(L)(i) The Secretary, in determining the amount of the payments that may be made under this subchapter with respect to services furnished by home health agencies, may not recoguize as reasonable (in the efficient delivery of such services) costs for thc provision of such services by an agency to the extent these costs exceed (on the aggregate for the agency) for cost reporting periods beginning on or after—

(I) July 1, 1985, and before July 1, 1986, 120 percent,

(II) July 1, 1986, and before July 1, 1987, 115 percent, or

(III) July 1, 1987, 112 percent,

of the mean of the labor-related and nonlabor per visit costs for free standing home health agencies.

(ii) Effective for cost reporting periods beginning on or after July 1, 1986, such limitations shall be applied on an aggregate basis for the agency, rather than on a discipline specifie basis, with appropriate adjustment for administrative and general costs of hospital-based agencies. The Secretary may provide for such exemptions and exceptions to such limitation as he deems appropriate.

[*See main edition for text of (M) and (N)*]

(O)(i) In establishing an appropriate allowance for depreciation and for interest on capital indebtedness and (if applicable) a return on equity capital with respect to an asset of a hospital or skilled nursing facility which has undergone a change of ownership, such regulations shall provide, except as provided in clause (iv), that the valuation of the asset after such change of ownership shall be the lesser of the allowable acquisition cost of such asset to the owner of record as of July 18, 1984 (or, in the case of an asset not in existence as of such date, the first owner of record of the asset after such date), or the acquisition cost of such asset to the new owner.

(ii) Such regulations shall provide for recapture of depreciation in the same manner as provided under the regulations in effect on June 1, 1984.

(iii) Such regulations shall not recognize, as reasonable in the provision of health care services, costs (including legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies) attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) for which any payment has previously been made under this subchapter.

(iv) In the case of the transfer of a hospital from ownership by a State to ownership by a nonprofit corporation without monetary consideration, the basis for capital allowances to the new owner shall be the book value of the hospital to the State at the time of the transfer.

(P) If such regulations provide for the payment for a return on equity capital (other than with respect to costs of inpatient hospital services), the rate of return to be recognized, for determining the reasonable cost of services furnished in a cost reporting period, shall be equal to the average of the rates of interest, for each of the months any part of which is included in the period, on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.

(Q) Except as otherwise explicitly authorized, the Secretary is not authorized to limit the rate of increase on allowable costs of approved medical educational activities.

(R) In determining such reasonable cost, eosts incurred by a provider of services representing a beneficiary in an unsuccessful appeal of a determination described in section 1395ff(b) of this title shall not be allowable as reasonable costs.

(2)(A) If the bed and board furnished as part of inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services is in accommodations more expensive than semi-private accommodations, the amount taken into account for purposes of payment under this subchapter with respect to such services may not exceed the amount that would be taken into account with respect to such services if furnished in such semi-private accommodations unless the more expensive accommodations were required for medical reasons.

(B) Where a provider of services which has an agreement in effect under this subchapter furnishes to an individual items or services which

are in excess of or more expensive than the items or services with respect to which payment may be made under part A or part B of this subchapter, as the case may be, the Secretary shall take into account for purposes of payment to such provider of services only the items or services with respect to which such payment may be made.

(3) If the bed and board furnished as part of inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services is in accommodations other than, but not more expensive than, semi-private accommodations and the use of such other accommodations rather than semi-private accommodations was neither at the request of the patient nor for a reason which the Secretary determines is consistent with the purposes of this subchapter, the amount of the payment with respect to such bed and board under part A of this subchapter shall be the amount otherwise payable under this subchapter for such bed and board furnished in semi-private accommodations minus the difference between the charge customarily made by the hospital or skilled nursing facility for bed and board in semi-private accommodations and the charge customarily made by it for bed and board in the accommodations furnished.

[*See main edition for text of (4)*]

(5)(A) Where physical therapy services, occupational therapy services, speech therapy services, or other therapy services or services of other health-related personnel (other than physicians) are furnished under an arrangement with a provider of services or other organization, specified in the first sentence of subsection (p) of this section (including through the operation of subsection (g) of this section) the amount included in any payment to such provider or other organization under this subchapter as the reasonable cost of such services (as furnished under such arrangements) shall not exceed an amount equal te the salary which would reasonably have been paid for such services (together with any additional costs that would have been incurred by the provider or other organization) to the person performing them if they had been performed in an employment relationship with such provider or other organization (rather than under such arrangement) plus the cost of such other expenses (including a reasonable allowance for traveltime and other reasonable types of expense related to any differences in acceptable methods of organization for the provision of such therapy) incurred by such person, as the Secretary may in regulations determine to be appropriate.

[*See main edition for text of (B), (6)*]

(7) [*See main edition for text of (A) to (C)*]

(D) For further limitations on reasonable cost and determination of payment amounts for routine service costs of skilled nursing facilities, see section 1395yy of this title.

[*See main edition for text of (w) to (y)*]

(z) Institutional planning

An overall plan and budget of a hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, or home health agency shall be considered sufficient if it—

[*See main edition for text of (1)*]

(2)(A) provides for a capital expenditures plan for at least a 3-year period (including the year to which the operating budget described in paragraph (1) is applicable) which includes and identifies in detail the anticipated sources of financing for, and the objectives of, each anticipated expenditure in excess of $600,000 (or such lesser amount as may be established by the State under section 1320a-1(g)(1) of this title in which the hospital is located) related to the acquisition of land, the improvement of land, buildings, and equipment, and the replacement, modernization, and expansion of the buildings and equipment which would, under generally accepted accounting principles, be considered capital items;

(B) provides that such plan is submitted to the agency designated under section 1320a-1(b) of this title, or if no such agency is designated, to the appropriate health planning agency in the State (but this subparagraph shall not apply in the case of a facility exempt from review under section 1320a-1 of this title by reason of section 1320a-1(j) of this title);

[*See main edition for text of (3) and (4)*]

(aa) Rural health clinic services

[*See main edition for text of (1)*]

(2) The term "rural health clinic" means a facility which—

[*See main edition for text of (A) to (H)*]

(I) has appropriate procedures for review of utilization of clinic services to the extent that the Secretary determines to be necessary and feasible; and

[*See main edition for text of (J)*]

For the purposes of this subchapter, such term includes only a facility which (i) is located in an area that is not an urbanized area (as defined by the Bureau of the Census) and that is designated by the Secretary either (I) as an area with a shortage of personal health services under section 1302(7) of the Public Health Service Act [42 U.S.C. 300e-1(7)] or (II) as a health manpower shortage area described in section 332(a)(1)(A) of that Act [42 U.S.C. 254e(a)(1)(A)] because of its shortage of primary medical care manpower, (ii) has filed an agreement with the Secretary by which it agrees not to charge any individual or other person for items or services for which such individual is entitled to have payment made under this subchapter, except for the amount of any deductible or coinsurance amount imposed with respect to such items or services (not in excess of the amount customarily charged for such

items and services by such clinic), pursuant to subsections (a) and (b) of section 1395*l* of this title, (iii) employs a physician assistant or nurse practitioner, and (iv) is not a rehabilitation agency or a facility which is primarily for the care and treatment of mental diseases. A facility that is in operation and qualifies as a rural health clinic under this subchapter or subchapter XIX of this chapter and that subsequently fails to satisfy the requirement of clause (i) shall be considered, for purposes of this subchapter and subchapter XIX of this chapter, as still satisfying the requirement of such clause.

[*See main edition for text of (3)*]

(bb) Services of a certified registered nurse anesthetist

(1) The term "services of a certified registered nurse anesthetist" means anesthesia services and related care furnished by a certified registered nurse anesthetist (as defined in paragraph (2)) which the nurse anesthetist is legally authorized to perform as such by the State in which the services are furnished.

(2) The term "certified registered nurse anesthetist" means a certified registered nurse anesthetist licensed by the State who meets such education, training, and other requirements relating to anesthesia services and related care as the Secretary may prescribe. In prescribing such requirements the Secretary may use the same requirements as those established by a national organization for the certification of nurse anesthetists.

(cc) Comprehensive outpatient rehabilitation facility services

(1) The term "comprehensive outpatient rehabilitation facility services" means the following items and services furnished by a physician or other qualified professional personnel (as defined in regulations by the Secretary) te an individual who is an outpatient of a comprehensive outpatient rehabilitation facility under a plan (for furnishing such items and services to such individual) established and periodically reviewed by a physician—

[*See main edition for text of (A) to (E)*]

(F) drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered;

(G) supplies and durable medical equipment; and

[*See main edition for text of (H)*]

excluding, however, any item or service if it would not be included under subsection (b) of this section if furnished to an inpatient of a hospital.

(2) The term "comprehensive outpatient rehabilitation facility" means a facility which—

[*See main edition for text of (A) to (E)*]

(F) in the case of a facility in any State in which State or applicable local law provides for the licensing of facilities of this nature (i) is licensed pursuant to such law, or (ii) is approved by the agency of such State or locality, responsible for licensing facilities of this nature, as meeting the standards established for such licensing;

[*See main edition for text of (G) to (I)*]

(dd) Hospice care; hospice program; definitions; certification; waiver by Secretary

[*See main edition for text of (1)*]

(2) The term "hospice program" means a public agency or private organization (or a subdivision thereof) which—

(A)(i) is primarily engaged in providing the care and services described in paragraph (1) and makes such services available (as needed) on a 24-hour basis and which also provides bereavement counseling for the immediate family of terminally ill individuals,

(ii) provides for such care and services in individuals' homes, on an outpatient basis, and on a short-term inpatient basis, directly or under arrangements made by the agency or organization, except that—

(I) the agency or organization must routinely provide directly substantially all of each of the services described in subparagraphs (A), (C), (F), and (H) of paragraph (1), except as otherwise provided in paragraph (5), and

[*See main edition for text of (II), (iii), (B) to (G), (3) and (4)*]

(5)(A) The Secretary may waive the requirements of paragraph (2)(A)(ii)(I) for an agency or organization with respect to all or part of the nursing care described in paragraph (1)(A) if such agency or organization—

(i) is located in an area which is not an urbanized area (as defined by the Bureau of the Census);

(ii) was in operation on or before January 1, 1983; and

(iii) has demonstrated a good faith effort (as determined by the Secretary) to hire a sufficient number of nurses to provide such nursing care directly.

(B) Any waiver, which is in such form and containing such information as the Secretary may require and which is requested by an agency or organization under subparagraph (A), shall be deemed to be granted unless such request is denied by the Secretary within 60 days after the date such request is received by the Secretary. The granting of a waiver under subparagraph (A) shall not preclude the granting of any subsequent waiver request should such a waiver again become necessary.

(ee) Discharge planning process

(1) A discharge planning process of a hospital shall be considered sufficient if it is applicable to services furnished by the hospital to individuals entitled to benefits under this subchapter and if it meets the guidelines and standards established by the Secretary under paragraph (2).

(2) The Secretary shall develop guidelines and standards for the discharge planning process in order to ensure a timely and smooth transition to the most appropriate type of and setting for post-hospital or rehabilitative care.

The guidelines and standards shall include the following:

(A) The hospital must identify, at an early stage of hospitalization, those patients who are likely to suffer adverse health consequences upon discharge in the absence of adequate discharge planning.

(B) Hospitals must provide a discharge planning evaluation for patients identified under subparagraph (A) and for other patients upon the request of the patient, patient's representative, or patient's physician.

(C) Any discharge planning evaluation must be made on a timely basis to ensure that appropriate arrangements for post-hospital care will be made before discharge and to avoid unnecessary delays in discharge.

(D) A discharge planning evaluation must include an evaluation of a patient's likely need for appropriate post-hospital services and the availability of those services.

(E) The discharge planning evaluation must be included in the patient's medical record for use in establishing an appropriate discharge plan and the results of the evaluation must be discussed with the patient (or the patient's representative).

(F) Upon the request of a patient's physician, the hospital must arrange for the development and initial implementation of a discharge plan for the patient.

(G) Any discharge planning evaluation or discharge plan required under this paragraph must be developed by, or under the supervision of, a registered professional nurse, social worker, or other appropriately qualified personnel.

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, §§ 602(d), 607(b)(2), (d), 97 Stat. 163, 171, 172; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2314(a), 2318(a), (b), 2319(a), 2321(e), 2322(a), 2323(a), 2324(a), 2335(b), 2340(a), 2341(a), (c), 2342(a), 2343(a), (b), 2354(b)(18)-(29), 98 Stat. 1079, 1081, 1082, 1085, 1086, 1090, 1093, 1094, 1101; Nov. 8, 1984, Pub. L. 98-617, § 3(a)(4), (b)(7), 98 Stat. 3295, 3296; Apr. 7, 1986, Pub. L. 99-272, title IX, §§ 9107(b), 9110(a), 9202(i)(1), 9219(b)(1)(B), (3)(A), 100 Stat. 160, 162, 177, 182, 183; Oct. 21, 1986, Pub. L. 99-509, title IX, §§ 9305(c)(1), (2), 9313(a)(2), 9315(a), 9320(b), (c), (f), 9335(c)(1), 9336(a), 9337(d), 9338(a), 100 Stat. 1989, 2002, 2005, 2013, 2015, 2030, 2033, 2034.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in text, are classified to section 1395c et seq. and section 1395j et seq., respectively, of this title.

Part B of subchapter XI of this chapter, referred to in subsec. (w)(2), is classified to section 1320c et seq. of this title.

AMENDMENTS

1986—Subsec. (b)(4). Pub. L. 99-509, § 9320(f), inserted before the semicolon at end ", anesthesia services provided by a certified registered nurse anesthetist".

Subsec. (e)(6). Pub. L. 99-509, § 9305(c)(1), inserted "(A)" after "(6)" and cl. (B).

Subsec. (g). Pub. L. 99-509, § 9337(d)(1), added subsec. (g).

Subsec. (n). Pub. L. 99-272, § 9219(b)(1)(B), substituted "as his home" for "at his home".

Subsec. (r)(4). Pub. L. 99-509, § 9336(a), amended cl. (4) generally. Prior to amendment, cl. (4) read as follows: "a doctor of optometry who is legally authorized to practice optometry by the State in which he performs such function, but only with respect to services related to the condition of aphakia, or".

Subsec. (s)(2)(D). Pub. L. 99-509, § 9337(d)(2), inserted "and outpatient occupational therapy services".

Subsec. (s)(2)(J). Pub. L. 99-509, § 9335(c)(1), added subpar. (J).

Subsec. (s)(2)(K). Pub. L. 99-509, § 9338(a), added subpar. (K).

Subsec. (s)(11) to (15). Pub. L. 99-509, § 9320(b), added par. (11) and redesignated former pars. (11) to (14) as (12) to (15), respectively.

Subsec. (v)(1)(B). Pub. L. 99-272, § 9107(b)(2), substituted "any cost reporting period shall be equal to" for "any fiscal period shall not exceed one and one-half times" and "the period" for "such fiscal period".

Subsec. (v)(1)(G)(i). Pub. L. 99-272, § 9219(b)(3)(A), inserted "on the basis of" after "(during such period)" in provisions following subcl. (III).

Subsec. (v)(1)(L). Pub. L. 99-509, § 9315(a), inserted "(I)" after "(L)", struck out "the 75th percentile of such costs per visit for free standing home health agencies, or, in the judgment of the Secretary, such lower percentile or such comparable or lower limit (based on or related to the mean of the costs of such agencies or otherwise) as the Secretary may determine.", and substituted in lieu "for cost reporting periods beginning on or after—

"(I) July 1, 1985, and before July 1, 1986, 120 percent,

"(II) July 1, 1986, and before July 1, 1987, 115 percent, or

"(III) July 1, 1987, 112 percent,

of the mean of the labor-related and nonlabor per visit costs for free standing home health agencies.

"(ii) Effective for cost reporting periods beginning on or after July 1, 1986, such limitations shall be applied on an aggregate basis for the agency, rather than on a discipline specific basis, with appropriate adjustment for administrative and general costs of hospital-based agencies."

Subsec. (v)(1)(O)(i). Pub. L. 99-272, § 9110(a)(1), inserted ", except as provided in clause (iv)," after "such regulations shall provide".

Subsec. (v)(1)(O)(iv). Pub. L. 99-272, § 9110(a)(2), added cl. (iv).

Subsec. (v)(1)(P). Pub. L. 99-272, § 9107(b)(1), added subpar. (P).

Subsec. (v)(1)(Q). Pub. L. 99-272, § 9202(i)(1), added subpar. (Q).

Subsec. (v)(1)(R). Pub. L. 99-509, § 9313(a)(2), added subpar. (R).

Subsec. (v)(5)(A). Pub. L. 99-509, § 9337(d)(3), inserted "(including through the operation of subsection (g) of this section)" after "subsection (p) of this section".

Subsec. (bb). Pub. L. 99-509, § 9320(c), added subsec. (bb).

Subsec. (ee). Pub. L. 99-509, § 9305(c)(2), added subsec. (ee).

1984—Subsec. (d). Pub. L. 98-369, § 2335(b)(1), struck out subsec. (d) which defined "inpatient tuberculosis hospital services" as inpatient hospital services furnished to an inpatient of a tuberculosis hospital.

Subsec. (e). Pub. L. 98-369, § 2335(b)(2), struck out "or tuberculosis unless it is a tuberculosis hospital (as defined in subsection (g) of this section) or" before "unless it is a psychiatric hospital" in provisions following par. (9).

Subsec. (f). Pub. L. 98-369, § 2340(a), struck out par. (5) which provided that "psychiatric hospital" meant an institution which was accredited by the Joint Commission on Accreditation of Hospitals, and struck out "if the institution is accredited by the Joint Commission on Accreditation of Hospitals or if such distinct part meets requirements equivalent to such accredita-

tion requirements as determined by the Secretary" in concluding provisions.

Subsec. (g). Pub. L. 98-369, § 2335(b)(1), struck out subsec. (g) which defined "tuberculosis hospital".

Subsec. (j). Pub. L. 98-369, § 2335(b)(3), in provisions following par. (15), struck out "or tuberculosis" after "treatment of mental diseases".

Subsec. (j)(2). Pub. L. 98-369, § 2354(b)(18), substituted "provision for" for "provision of".

Subsec. (j)(13). Pub. L. 98-369, § 2354(b)(19), substituted "an institution" for "a nursing home".

Subsec. (m)(5). Pub. L. 98-369, § 2321(e)(1), which directed the substitution of "and durable medical equipment" for ", and the use of medical applicances" was executed by making the substitution for ", and the use of medical appliances" as the probable intent of Congress.

Subsec. (n). Pub. L. 98-369, § 2321(e)(3), added subscc. (n).

Subsec. (p)(1). Pub. L. 98-369, § 2341(a), substituted "paragraph (1) or (3) of subsection (r) of this section" for "subsection (r)(1) of this section".

Subsec. (p)(2). Pub. L. 98-369, § 2342(a), substituted "by a physician as so defined) or by a qualified physical therapist and is periodically reviewed by a physician (as so defined)" for ", and is periodically reviewed, hy a physician (as so defined)".

Subsec. (r)(3). Pub. L. 98-617, § 3(b)(7), substituted "under subsections (k), (m), and (p)(1) of this section and sections 1395f(a), 1395k(a)(2)(F)(ii), and 1395n of this title" for "under subsections (k) and (m) and sections 1395f(a) and 1395n of this title" before "is consistent with the policy".

Puh. L. 98-369, § 2341(c), substituted "for the purposes of subsections (k), (m), and (p)(1) of this section" for "for the purposes of subsections (k) and (m) of this section", and substituted "sections 1395f(a), 1395k(a)(2)(F)(ii), and 1395n of this title but only if" for "sections 1395f(a) and 1395n of this title but only if".

Subsec. (s)(2)(H). Pub. L. 98-369, § 2322(a), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (s)(2)(I). Pub. L. 98-369, § 2324(a), added subpar. (I).

Subsec. (s)(6). Puh. L. 98-369, § 2321(e)(2), struck out provision which included iron lungs, oxygen tents, ete. with durable medical equipment. See subsec. (n) of this section.

Subsec. (s)(10). Pub. L. 98-369, § 2323(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (u). Pub. L. 98-369, § 2354(b)(20), struck out "or" before "home health agency".

Subsec. (v)(1)(B). Pub. L. 98-369, § 2354(b)(21)(A), realigned margin of subpar. (B).

Subsec. (v)(1)(C). Pub. L. 98-369, § 2354(b)(21)(B), realigned margins of subpar. (C).

Subsec. (v)(1)(C)(i). Pub. L. 98-369, § 2354(b)(22), inserted a dash after "but only if".

Subsec. (v)(1)(D). Pub. L. 98-369, § 2354(b)(21)(B), realigned margin of subpar. (D).

Pub. L. 98-369, § 2354(b)(21)(C), inserted a comma after "section 1395k(a)(2)(B)(i) of this title".

Subsec. (v)(1)(E). Pub. L. 98-369, § 2319(a)(1), struck out cl. (i) which directed that such regulations provide that any determination of reasonable cost with respect to services provided by hospital-based skilled nursing facilities be made on the basis of a single standard based on the reasonableness of costs incurred by free standing skilled nursing facilities, subject to such adjustments as decmed appropriate by the Secretary, and struck out the designation "(ii)".

Pub. L. 98-369, § 2354(b)(23), as amended by Pub. L. 98-617, § 3(a)(4), substituted "use" for "uses".

Subsec. (v)(1)(I)(i), (ii). Pub. L. 98-369, § 2354(h)(24), substituted "by thc Secretary, or upon request by the Comptroller General" for "to the Secretary, or upon request to the Comptroller General".

Subsec. (v)(1)(K). Pub. L. 98-369, § 2318(a), (b), designated existing provisions as cl. (i), substituted therein "as defined in clause (ii)" for "provided in an emergency room", and added cl. (ii).

Subsec. (v)(1)(O). Puh. L. 98-369, § 2314(a), added subpar. (O).

Subsec. (v)(3). Pub. L. 98-369, § 2354(b)(25), substituted "semi-private" for "semiprivate" after "furnished in".

Subsec. (v)(7)(D). Pub. L. 98-369, § 2319(a)(2), added subpar. (D).

Subsec. (z)(2). Pub. L. 98-369, § 2354(b)(26), substituted "paragraph (1)" for "subparagraph (1)".

Subsec. (aa)(2)(I). Pub. L. 98-369, § 2354(b)(27), substituted "utilization" for "ultiiization".

Subsec. (cc)(1)(F). Pub. L. 98-369, § 2354(b)(28), substituted "self-administered" for "self administered".

Subsec. (cc)(1)(G). Pub. L. 98-369, § 2321(e)(4), substituted "and durable medical equipment" for ", appliances, and equipment, including the purchase or rental of equipment".

Subsec. (cc)(2)(F). Puh. L. 98-369, § 2354(b)(29), substituted "standards established" for "standard establishment".

Subsec. (dd)(2)(A)(ii)(I). Pub. L. 98-369, § 2343(a), inserted "except as otherwise provided in paragraph (5),".

Subsec. (dd)(5). Pub. L. 96-369, § 2343(b), added par. (5).

1983—Subsec. (v)(1)(G)(i). Pub. L. 98-21, § 602(d)(1), substituted "the amount otherwise payable under part A with respect to" for "on the basis of the reasonable cost of" in provisions following subcl. (III).

Subsec. (v)(2)(A). Pub. L. 98-21, § 602(d)(2), substituted "the amount that would be taken into account with respect to" for "an amount equal to the reasonable cest of".

Subsec. (v)(2)(B). Pub. L. 98-21, § 602(d)(3), struck out "the equivalent of the reasonable cost of" after "ouly".

Subsec. (v)(3). Pub. L. 98-21, § 602(d)(4), substituted "the amount otherwise payable under this subchapter for such bed and board furnished in semiprivate accommodations" for "the reasonable cost of such bed and board furnished in semiprivate accommodations (determined pursuant to paragraph (1))".

Subsec. (z)(2). Pub. L. 98-21, § 607(d), designated existing provisions as suhpar. (A) and added subpar. (B).

Pub. L. 98-21, § 607(b)(2), substituted "$600,000 (or such lesser amount as may be established by the State under section 1320a-1(g)(1) of this title in which the hospital is located)" for "$100,000".

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 9305(c)(4) of Pub. L. 99-509 provided that: "The amendinents made hy this subsection [amending sections 1395x and 1395bb of this title] shall apply to hospitals as of one year after the date of the enactment of this Act [Oct. 21, 1986]."

Section 9313(a)(3) of Pub. L. 99-509 provided that: "The amendments made by this paragraph [probably means "this subsection" which amended sections 1395x and 1395ff of this title] take effect on the date of the enactment of this Act [Oct. 21, 1986]."

Section 9335(c)(2) of Pub. L. 99-509 provided that: "The amendments made by paragraph (1) [amending this section] shall apply to immunosuppressive drugs furnished on or after January 1, 1987."

Section 0336(b) of Pub. L. 99-509 provided that: "The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after April 1, 1987."

Amendment by section 0337(d) of Pub. L. 99-509 applicable to expenses incurred for outpatient occupational therapy services furnished on or after July 1, 1987, see section 9337(e) of Pub. L. 99-509, set out as a note under section 1395k of this title.

Section 9338(f) of Pub. L. 99-509 provided that: "The amendments made by this section [amending sections 1395u and 1395x of this title] shall apply to services furnished on or aftor January 1, 1987."

Section 9107(c)(2) of Pub. L. 99-272 provided that: "The amendments made by subsection (b) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1985."

Section 9110(b) of Pub. L. 99-272 provided that: "The amendments made by subsection (a) [amending this section] shall be applied as though they were originally included in the Deficit Reduction Act of 1984 [Pub. L. 98-369]."

Section 9202(i)(2) of Pub. L. 99-272 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after July 1, 1985."

Amendment by section 9219(b)(1)(B) of Pub. L. 99-272 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98-369, see section 9219(b)(1)(D) of Pub. L. 99-272, set out as a note under section 1395u of this title.

Section 9219(b)(3)(B) of Pub. L. 99-272 provided that: "The amendment made by subparagraph (A) [amending this section] shall be effective as if it had been originally included in the Social Security Amendments of 1983 [Pub. L. 98-21]."

Amendment by section 9320(b), (c), and (f) of Pub. L. 99-509 applicable to services furnished on or after Jan. 1, 1989, see section 9320(i) of Pub. L. 99-509, set out as a note under section 1395k of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98-369, see section 3(c) of Pub. L. 98-817, set out as a note under seetion 1395f of this title.

Section 2314(c)(1), (2) of Pub. L. 98-369 provided that:

"(1) Clause (i) of section 1861(v)(1)(O) of the Social Security Act [subsec. (v)(1)(O)(i) of this section] shall not apply to changes of ownership of assets pursuant to an enforceable agreement entered into before the date of the enactment of this Act [July 18, 1984].

"(2) Clause (iii) of section 1861(v)(1)(O) of such Act [subsec. (v)(1)(O)(iii) of this section] shall apply to costs incurred on or after the date of the enactment of this Act."

Section 2318(c) of Pub. L. 98-369 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 [July 18, 1984]."

Amendment by section 2319(a) of Pub. L. 98-369 applicable to cost reporting periods beginning on or after July 1, 1984, see section 2319(c) of Pub. L. 98-369, set out as an Effective Date note under section 1395yy of this title.

Amendment by section 2321(e) of Pub. L. 98-369 applicable to items and services furnished on or after July 18, 1984, see section 2321(g) of Pub. L. 98-369, set out as a note under section 1395f of this title.

Section 2322(b) of Pub. L. 98-369 provided that: "The amendments made by subsection (a) [amending this section] shall be effective with respect to services furnished on or after the dato of the enactment of this Act [July 18, 1984]."

Amendment by section 2323(a) of Pub. L. 98-369 applicable to services furnished on or after Sept. 1, 1984, see section 2323(d) of Pub. L. 98-369, set out as a note under section 1395*l* of this title.

Section 2324(b) of Pub. L. 98-369 provided that: "The amendments made by subsection (a) [amending this section] shall be effective with respect to items and services purchased on or after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2335(b) 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.

Section 2340(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 1395x and 1396d of this title] shall become effective on the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2341(a), (c) of Pub. L. 98-369 applicable to services furnished on or after July 18, 1984, see section 2341(d) of Pub. L. 98-369, set out as a note under section 1395k of this title.

Amendment by section 2342(a) of Pub. L. 98-369 applicable to plans of care established on or after July 18, 1984, see section 2342(c) of Pub. L. 98-369, set out as a note under section 1395n of this title.

Section 2343(c) of Pub. L. 98-369 provided that: "The amendments made by subsections (a) and (b) [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2354(b)(18)-(29) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by section 602 of Pub. L. 98-21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after Nov. 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98-21, set out as a note under section 1395ww of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 102(b) of Pub. L. 97-248, as amended by Pub. L. 98-21, title VI, § 605(a), Apr. 20, 1983, 97 Stat. 169, provided that: "The amendment made by subsection (a) [amending subsec. (v)(1)(E) of this section] shall be effective with respect to cost reporting periods beginning on or after October 1, 1983."

Amendment by section 122(d) of Pub. L. 97-248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97-248, as amended, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 937(c) of Pub. L. 96-499, as amended by Pub. L. 98-369, div. B, title III, § 2354(c)(1)(B), July 18, 1984, 98 Stat. 1102, provided that: "The amendment made by subsection (a) [amending subsec. (r)(4) of this section] shall apply to services furnished on or after July 1, 1981."

DEVELOPMENT OF UNIFORM NEEDS ASSESSMENT INSTRUMENT

Section 9305(h) of Pub. L. 99-509 provided that:

"(1) DEVELOPMENT.—The Secretary of Health and Human Services shall develop a uniform needs assessment instrument that—

"(A) evaluates—

"(i) the functional capacity of an individual,

"(ii) the nursing and other care requirements of the individual to meet health care needs and to assist with functional incapacities, and

"(iii) the social and familial resources available to the individual to meet those requirements; and

"(B) can be used by discharge planners, hospitals, nursing facilities, other health care providers, and fiscal intermediaries in evaluating an individual's need for post-hospital extended care services, home health services, and long-term care services of a health-related or supportive nature.

The Secretary may develop more than one such instrument for use in different situations.

"(2) ADVISORY PANEL.—The Secretary shall develop any instrument in consultation with an advisory panel, appointed by the Secretary, that includes experts in the delivery of post-hospital extended care services, home health services, and long-term care services and includes representatives of hospitals, of

physicians, of skilled nursing facilities, of home health agencies, of long-term care providers, of fiscal intermediaries, and of medicare beneficiaries.

"(3) REPORT ON INSTRUMENT.—The Secretary shall report to Congress, not later than January 1, 1989, on the instrument or instruments developed under this section. The report shall [sic] recommendations for the appropriate use of such instrument or instruments."

PRIOR AND CONCURRENT AUTHORIZATION DEMONSTRATION PROJECT

Section 9305(k) of Pub. L. 99-509 provided that:

"(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a demonstration program concerning prior and concurrent authorization for post-hospital extended care services and home health services furnished under part A or part B of title XVIII of the Social Security Act [42 U.S.C. 1395c et seq., 1395j et seq.].

"(2) SCOPE.—The program shall include at least four projects and shall be initiated by not later than January 1, 1987.

"(3) CONSULTATION AND MONITORING.—The program shall be developed in consultation with an advisory panel that includes experts in the delivery of post-hospital extended care services, home health services, and long-term care services and includes representatives of hospitals, of physicians, of skilled nursing facilities, of home health agencies, of long-term care providers, of fiscal intermediaries, and of medicare beneficiaries. The Secretary shall monitor the acceptance of individuals entitled to benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] by providers to ensure that the placement of such individuals is not delayed until the results of prior and concurrent review are known.

"(4) EVALUATION AND REPORT.—The Secretary shall evaluate the demonstration program conducted under this subsection and shall report to Congress on such evaluation no later than Febraury 1, 1989. Such evaluation and report shall address—

"(A) the administrative and program costs for prior and concurrent authorization across demonstration projects and in comparison to administrative and program costs under the current system of retroactive review, including costs for uncovered services paid under the waiver of liability which would not be incurred under prior or concurrent authorization;

"(B) impact of prior or concurrent authorization on access to and availability of extended care services and home health services in comparison to the current system (including costs to providers) and on timely discharge of hospital inpatients; and

"(C) accuracy and associated cost savings of payment determinations and rates of claim reversals under prior or concurrent authorization versus the current system.

"(5) FUNDING.—Expenditures made for the demonstration program shall be made from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act [42 U.S.C. 1395i]. Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Socretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this subsection.

"(6) WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with such requirements of title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] to the extent and for the period the Secretary finds necessary for the conduct of the demonstration program."

CONSIDERATIONS IN ESTABLISHING LIMITS ON PAYMENT FOR HOME HEALTH SERVICES

Section 9315(b) of Pub. L. 99-509 provided that: "In establishing limitations under section 1861(v)(1)(L) of the Social Security Act [42 U.S.C. 1395x(v)(1)(L)] on payment for home health services for cost reporting periods beginning on or after July 1, 1986, the Secretary of Health and Human Services shall—

"(1) base such limitations on the most recent data available, which data may be for cost reporting periods beginning no earlier than October 1, 1983; and

"(2) take into account the changes in costs of home health agencies for billing and verification procedures that result from the Secretary's changing the requirements for such procedures, to the extent the changes in costs are not reflected in such data.

Paragraph (2) shall apply to changes in requirements effected before, on, or after July 1, 1986."

COMPTROLLER GENERAL STUDY AND REPORT ON COST LIMITS FOR HOME HEALTH SERVICES

Section 9315(c) of Pub. L. 99-509 provided that: "The Comptroller General shall study and report to Congress, not later than February 1, 1988, on—

"(1) the appropriateness and impact on medicare beneficiaries of applying the per visit cost limits for home health services under section 1861(v)(1)(L) of the Social Security Act [42 U.S.C. 1395x(v)(1)(L)] on a discipline-specific basis, rather than on an aggregate basis, for all home health services furnished by an agency, and

"(2) the appropriateness of the percentage limits established under such section."

REDUCTION IN PAYMENT TO AVOID DUPLICATE PAYMENT FOR SERVICES OF PHYSICIAN ASSISTANTS

Section 9338(d) of Pub. L. 99-509 provided that: "Notwithstanding any other provision of law, the Secretary of Health and Human Services may reduce the amount of payments otherwise made to hospitals and skilled nursing facilities under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.], so as to eliminate estimated duplicate payments for historical or current costs attributable to services described in section 1861(s)(2)(K) of such Act [subsec. (s)(2)(K) of this section] (for which payment may be made under the amendments made by this section [amending sections 1395u and 1395x of this title])."

STUDY AND REPORT ON PAYMENTS FOR PHYSICIAN ASSISTANTS

Section 9338(e) of Pub. L. 99-509 provided that: "The Secretary shall report to Congress, by not later than April 1, 1988, concerning adjustments to the amount of payment made, under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.], for services described in section 1861(s)(2)(K) of such Act [42 U.S.C. 1395x(s)(2)(K)], to ensure that the amount of such payments reflects the approximate cost of furnishing the services, taking into account compensation costs and overhead and supervision costs attributable to physician assistants."

COST LIMITS FOR ROUTINE SERVICES FOR URBAN AND RURAL HOSPITAL-BASED SKILLED NURSING FACILITIES; COST REPORTING PERIODS BEGINNING ON OR AFTER OCTOBER 1, 1982, AND PRIOR TO JULY 1, 1984

Section 2319(d) of Pub. L. 98-369 provided that: "Notwithstanding limits on the cost of skilled nursing facilities which may have been issued under section 1861(v) of the Social Security Act [42 U.S.C. 1395x(v)] prior to the date of the enactment of this Act [July 18, 1984], in the case of cost reporting periods beginning on or after October 1, 1982, and prior to July 1, 1984, the cost limits for routine services for urban and rural hospital-based skilled nursing facilities shall be 112 percent of the mean of the respective routine costs for urban and rural hospital-based skilled nursing facilities."

STUDY AND REPORT RELATING TO REQUIREMENTS THAT CORE SERVICES BE FURNISHED DIRECTLY BY HOSPICES

Section 2343(d) of Pub. L. 98-369 provided that: "The Secretary of Health and Human Services shall conduct a study of the necessity and appropriateness of the requirements that certain 'core' services be furnished directly by a hospice, as required under section 1861(dd)(2)(A)(ii)(I) of the Social Security Act [42 U.S.C. 1395x(dd)(2)(A)(ii)(I)]. The Secretary shall report the results of such study to the Congress with the report required under section 122(i)(1) of the Tax Equity and Fiscal Responsibility Act of 1982 [probably means section 122(j)(1) of Pub. L. 97-248, set out as a note under section 1395f of this title]."

REPORT ON EFFECT OF 1982 AMENDMENT ON HOSPITAL-BASED SKILLED NURSING FACILITIES

Section 805(b) of Pub. L. 98-21 provided that: "The Secrotary of Health and Human Services shall, prior to December 31, 1983, complete a study and report to the Congress with respect to (1) the effect which the implementation of section 102 of the Tax Equity and Fiscal Responsibility Act of 1982 [amending subsec. (v)(1)(E) of this section] would have on hospital-based skilled nursing facilities, given the differences (if any) in the patient populations served by such facilities and by community-based skilled nursing facilities and (2) the impact on skilled nursing facilities of hospital prospective payment systems, and recommendations concerning payment of skilled nursing facilities."

Section 2319(e) of Pub. L. 98-369 provided that: "The Secretary of Health and Human Services shall submit to the Congress, prior to December 1, 1984, the report required under section 605(b) of the Social Security Amendments of 1983 [section 605(b) of Pub. L. 98-21, set out above]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 254b, 254c, 255, 300t-12, 300w-3, 426-1, 1301, 1320a-3, 1320c-3, 1395d, 1395f, 1395g, 1395h, 1395k, 1395*l*, 1395n, 1395u, 1395y, 1395z, 1395aa, 1395bb, 1395co, 1395dd, 1395mm, 1395nn, 1395*oo*, 1395pp, 1395rr, 1395tt, 1395uu, 1395ww, 1395yy, 1396a, 1396b, 1396d, 1396n, 3022, 11151 of this title; title 26 sections 213, 415.

§ 1395y. Exclusions from coverage

(a) Items or services specifically excluded

Notwithstanding any other provision of this subchapter, no payment may be made under part A or part B of this subchapter for any expenses incurred for items or services—

(1)(A) which, except for items and services described in subparagraph (B), (C), or (D), are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member,

(B) in the case of items and services described in section 1395x(s)(10) of this title, which are not reasonable and necessary for the prevention of illness,

(C) in the case of hospice care, which are not reasonable and necessary for the palliation or management of terminal illness,

(D) in the case of clinical care items and services provided with the concurrence of the Secretary and with respect to research and experimentation conducted by, or under contract with, the Prospective Payment Assessment Commission or the Secretary, which are not reasonable and necessary to carry out the purposes of section 1395ww(e)(6) of this title, and

(E) in the case of research conducted pursuant to section 1395*ll*(c) of this title, which is not reasonable and necessary to carry out the purposes of that section;

[*See main edition for text of* (2) *to* (11)]

(12) where such expenses are for services in connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth, except that payment may be made under part A of this subchapter in the case of inpatient hospital services in connection with the provision of such dental services if the individual, because of his underlying medical condition and clinical status or because of the severity of the dental procedure, requires hospitalization in connection with the provision of such services;

(13) where such expenses are for—

(A) the treatment of flat foot conditions and the prescription of supportive devices therefor,

(B) the treatment of subluxations of the foot, or

(C) routine foot care (including the cutting or removal of corns or calluses, the trimming of nails, and other routine hygienic care);

(14) which are other than physicians' services (as defined in regulations promulgated specifically for purposes of this paragraph) and which are furnished to an individual who is an [1] patient of a hospital by an entity other than the hospital, unless the services are furnished under arrangements (as defined in section 1395x(w)(1) of this title) with the entity made by the hospital or are services of a certified registered nurse anesthetist;

(15) which are for services of an assistant at surgery in a cataract operation unless, before the surgery is performed, the appropriate utilization and quality control peer review organization (under part B of subchapter XI of this chapter) or a carrier under section 1395u of this title has approved of the use of such an assistant in the surgical procedure based on the existence of a complicating medical condition; or

(16) furnished in connection with a surgical procedure for which a second opinion is required under section 1320c-13(c)(2) of this title and has not been obtained.

(b) Items or services paid, etc., under workmen's compensation laws and end stage renal disease program

(1) Payment under this subchapter may not be made with respect to any item or service to the extent that payment has been made, or can reasonably be expected to be made promptly (as determined in accordance with regulations), with respect to such item or service, under a workmen's compensation law or plan of the United States or a State or under an automobile or liability insurance policy or plan (including a self-insured plan) or under no fault insur-

[1] So in original. Probably should be "a".

ance. Any payment under this subchapter with respect to any item or service shall be conditioned on reimbursement to the appropriate Trust Fund established by this subchapter when notice or other information is received that payment for such item or serivce has been or could be made under such a law, policy, plan, or insurance. In order to recover payment made under this subchapter for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a law, policy, plan, or insurance, or against any entity (including any physician or provider) which has been paid with respect to such item or service under such law, policy, plan, or insurance, and may join or intervene in any action related to the events that gave rise to the need for such item or service. The United States shall be subrogated (to the extent of payment made under this subchapter for an item or service) to any right of an individual or any other entity to payment with respect to such item or service under such a law, policy, plan, or insurance. The Secretary may waive the provisions of this subsection in the case of an individual claim if he determines that the probability of recovery or amount involved in such claim does not warrant the pursuing of the claim.

(2)(A) In the case of an individual who is entitled to benefits under part A of this subchapter or is eligible to enroll under part B of this subchapter solely by reason of section 426-1 of this title, payment under this subchapter may not be made, except as provided in subparagraph (B), with respect to any item or service furnished during the period described in subparagraph (C) to the extent that payment with respect to expenses for such item or service (i) has been made under any group health plan (as defined in section 162(i)(2)[4] of the Internal Revenue Code of 1986) or (ii) the Secretary determines will be made under such a plan as promptly as would otherwise be the case if payment were made by the Secretary under this subchapter.

(B) Any payment under this subchapter with respect to any item or service furnished to an individual described in subparagraph (A) during the period described in subparagraph (C) shall be conditioned on reimbursement to the appropriate Trust Fund established by this subchapter when notice or other information is received that payment for such item or service has been or could be made under a plan described in subparagraph (A). In order to recover payment made under this subchapter for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a plan, or against any entity (including any physician or provider) which has been paid with respect to such item or service under such plan, and may join or intervene in any action related to the events that gave rise to the need for such item or service. The United States shall be subrogated (to the extent of payment made under this subchapter for an item or service) to any right of an individual or any other entity to payment with respect to such item or service under such a plan. The Secretary may waive the provisions of this subparagraph in the case of an individual claim if he determines that the probability of recovery or amount involved in such claim does not warrant the pursuing of the claim.

[*See main edition for text of (C) and (D)*]

(3)(A)(i) Payment under this subchapter may not be made, except as provided in clause (ii), with respect to any item or service furnished in any month during the period described in clause (iii) to an individual (or to the spouse of such individual) who is employed at the time such item or service is furnished to the extent that payment with respect to expenses for such item or service has been made, or can reasonably be expected to be made, under a group health plan (as defined in clause (iv)) under which such individual is covered by reason of such employment.

(ii) Any payment under this subchapter with respect to any item or service during the period described in clause (iii) shall be conditioned on reimbursement to the appropriate Trust Fund established by this subchapter when notice or other information is received that payment for such item or service has been or could be made under a group health plan. In order to recover payment made under this subchapter for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a plan, or against any entity (including any physician or provider) which has been paid with respect to such item or service under such plan, and may join or intervene in any action related to the events that gave rise to the need for such item or service. The United States shall be subrogated (to the extent of payment made under this subchapter for an item or service) to any right of an individual or any other entity to payment with respect to such item or service under such a plan. The Secretary may waive the provisions of this clause in the case of an individual claim if he determines that the probability of recovery or amount involved in such claim does not warrant the pursuing of the claim.

(iii) The provisions of clauses (i) and (ii) shall apply to an individual only for the period beginning with the month in which such individual becomes entitled to benefits under this subchapter under section 426(a) of this title and shall not include any month for which the individual would, upon application, be entitled to benefits under section 426-1 of this title.

(iv) For purposes of this paragraph, the term "group health plan" has the meaning given to such term in section 162(i)(2)[4] of the Internal Revenue Code of 1986.

[*See main edition for text of (B)*]

(4)(A)(i) A large group health plan may not take into account that an active individual is el-

[4] See References in Text note below.

igible for or receives benefits under this subchapter under section 426(b) of this title, other than an individual who is, or would upon application be, entitled to benefits under section 426-1 of this title.

(ii) Payment may not be made under this subchapter, except as provided in clause (iii), with respect to any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to the item or service as required under clause (i).

(iii) Any payment under this subchapter with respect to any item or service to which clause (i) applies shall be conditioned on reimbursement to the appropriate Trust Fund established by this subchapter. In order to recover payment made under this subchapter for the item or service, the United States may bring an action against any entity which is required under this subsection (a) of this section to pay with respect to the item or service (and may, in accordance with paragraph (5), collect double damages against that entity), or against any other entity that has received payment from that entity with respect to the item or service, and may join or intervene in any action related to the events that gave rise to the need for the item or service. The United States shall be subrogated (to the extent of payment made under this subchapter for an item or service) to any right under clause (i) of an individual or any other entity to payment with respect to the item or service. The Secretary may waive (in whole or in part) the provisions of this clause in the case of an individual claim if the Secretary determines that the waiver is in the best interests of the program established under this subchapter.

(B) In this paragraph:

(i) The term "large group health plan" has the meaning given such term in section 5000(b) of the Internal Revenue Code of 1986.

(ii) The term "active individual" means an employee (as may be defined in regulations), the employer, an individual associated with the employer in a business relationship, or a member of the family of any of those persons.

(C) The provisions of subparagraph (B) of paragraph (3) shall apply to coordination of payment under this paragraph in the case of large group health plans in the same manner as they apply to coordination of payment under paragraph (3) in the case of group health plans.

(D) The preceding provisions of this paragraph shall only apply to items and services furnished on or after January 1, 1987, and before January 1, 1992.

(5) There is hereby created a private cause of action for damages (which shall be in an amount double the amount otherwise provided) in the case of a workmen's compensation law or plan, automobile or liability insurance policy or plan or no fault insurance plan, group health plan, or large group health plan which is made a primary payer under paragraph (1), (2), (3), or (4), respectively, and which fails to provide for primary payment (or appropriate reimbursement) in accordance with such respective paragraphs.

[*See main edition for text of* (c) *to* (g)]

(h) Registry of cardiac pacemaker devices and leads; testing of devices and leads; withholding of payment

(1)(A) The Secretary shall, through the Commissioner of the Food and Drug Administration, provide for a registry of all cardiac pacemaker devices and pacemaker leads for which payment was made under this subchapter.

(B) Such registry shall include the manufacturer, model, and serial number of each such device or lead, the name of the recipient of such device or lead, the date and location of the implantation or removal of the device or lead, the name of the physician implanting or removing such device or lead, the name of the hospital or other provider billing for such procedure, any express or implied warranties associated with such device or lead under contract or State law, and such other information as the Secretary deems to be appropriate.

(C) Each physician and provider of services performing the implantation or replacement of pacemaker devices and leads for which payment is made or requested to be made under this subchapter shall, in accordance with regulations of the Secretary, submit information respecting such implantation or replacement for the registry.

(D) Such registry shall be for the purposes of assisting the Secretary in determining when payments may properly be made under this subchapter, in tracing the performance of cardiac pacemaker devices and leads, in determining when inspection by the manufacturer of such a device or lead may be necessary under paragraph (3), and in carrying out studies with respect to the use of such devices and leads. In carrying out any such study, the Secretary may not reveal any specific information which identifies any pacemaker device or lead recipient by name (or which would otherwise identify a specific recipient).

(E) Any person or organization may provide information to the registry with respect to cardiac pacemaker devices and leads other than those for which payment is made under this subchapter.

(2) The Secretary may, by regulation, require each provider of services—

(A) to return, to the manufacturer of the device or lead for testing under paragraph (3), any cardiac pacemaker device or lead which is removed from a patient and payment for the implantation or replacement of which was made or requested by such provider under this subchapter, and

(B) not to charge any beneficiary for replacement of such a device or lead if the device or lead has not been returned in accordance with subparagraph (A).

(3) The Secretary may, by regulation, require the manufacturer of a cardiac pacemaker device or lead (A) to test or analyze each pacemaker device or lead for which payment is made or requested under this subchapter and which is returned to the manufacturer by a provider of services under paragraph (2), and (B) to provide the results of such test or analysis to that provider, together with information

and documentation with respect to any warranties covering such device or lead. In any case where the Secretary has reason to believe, based upon information in the pacemaker registry or otherwise available to him, that replacement of a cardiac pacemaker device or lead for which payment is or may be requested under this subchapter is related to the malfunction of a device or lead, the Secretary may require that personnel of the Food and Drug Administration be present at the testing of such device by the manufacturer, to determine whether such device was functioning properly.

(4) The Secretary may deny payment under this subchapter, in whole or in part and for such period of time as the Secretary determines to be appropriate, with respect to the implantation or replacement of a pacemaker device or lead of a manufacturer performed by a physician and provider of services after the Secretary determines (in accordance with the procedures established under paragraphs (2) and (3) of subsection (d) of this section) that—

(A) the physician or provider of services has failed to submit information to the registry as required under paragraph (1)(C),

(B) the provider of services has failed to return devices and leads as required under paragraph (2)(A) or has improperly charged beneficiaries as prohibited under paragraph (2)(B), or

(C) the manufacturer of the device or lead has failed to perform and to report on the testing of devices and leads returned to it as required under paragraph (3).

(i) Awards and contracts for original research and experimentation of new and existing medical procedures; conditions

In order to supplement the activities of the Prospective Payment Assessment Commission under section 1395ww(e) of this title in assessing the safety, efficacy, and cost-effectiveness of new and existing medical procedures, the Secretary may carry out, or award grants or contracts for, original research and experimentation of the type described in clause (ii) of section 1395ww(e)(6)(E) of this title with respect to such a procedure if the Secretary finds that—

(1) such procedure is not of sufficient commercial value to justify research and experimentation by a commercial organization;

(2) research and experimentation with respect to such procedure is not of a type that may appropriately be carried out by an institute, division, or bureau of the National Institutes of Health; and

(3) such procedure has the potential to be more cost-effective in the treatment of a condition than procedures currently in use with respect to such condition.

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, §§ 601(f), 602(e), 97 Stat. 162, 163; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2301(a), 2304(c), 2313(c), 2344(a)-(c), 2354(b)(30), (31), 98 Stat. 1063, 1068, 1078, 1095, 1101, 1102; Apr. 7, 1986, Pub. L. 99-272, title IX, §§ 9201(a), 9307(a), 9401(c)(1), 100 Stat. 170, 193, 199; Oct. 21, 1986, Pub. L. 99-509, title IX, §§ 9316(b), 9319(a), (b), 9320(h)(1), 9343(c)(1), 100 Stat. 2007, 2010, 2011, 2016, 2040; Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in text, are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Part B of subchapter XI of this chapter, referred to in subsecs. (a)(15) and (g), is classified to section 1320c et seq. of this title.

Section 162(l)(2) of the Internal Revenue Code of 1986, referred to in subsec. (b)(2)(A), (3)(A)(iv), was redesignated section 162(l)(3) of title 26 by Pub. L. 99-272, title X, § 10001(a), Apr. 7, 1986, 100 Stat. 222. The Internal Revenue Code of 1986 is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1986—Subsec. (a)(1)(E). Pub. L. 99-509, § 9316(b), added subpar. (E).

Subsec. (a)(14). Pub. L. 99-509, § 9343(c)(1), substituted "patient" for "inpatient".

Pub. L. 99-509, § 9320(h)(1), inserted "or are services of a certified registered nurse anesthetist" after "hospital" at end.

Subsec. (a)(15). Pub. L. 99-272, § 9307(a), added par. (15).

Subsec. (a)(16). Pub. L. 99-272, § 9401(c)(1), added par. (16).

Subsec. (b)(2)(A). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (b)(3)(A)(i). Pub. L. 99-272, § 9201(a)(1), substituted "(or to the spouse of such individual)" for "who is under 70 years of age during any part of such month (or to the spouse of such individual, if the spouse is under 70 years of age during any part of such month)".

Subsec. (b)(3)(A)(iii). Pub. L. 99-272, § 9201(a)(2), struck out "and ending with the month before the month in which such individual attains the age of 70" after "section 426(a) of this title".

Subsec. (b)(3)(A)(iv). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (b)(4). Pub. L. 99-509, § 9319(a), added par. (4).

Subsec. (b)(5). Pub. L. 99-509, § 9319(b), added par. (5).

1984—Subsec. (a)(12). Pub. L. 98-369, § 2354(b)(30), struck out second comma after "dental procedure".

Subsec. (b)(1). Pub. L. 98-369, § 2344(a), substituted "to be made promptly" for "to be made" and "has been or could be made under such a law" for "has been made under such a law", and inserted "In order to recover payment made under this subchapter for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a law, policy, plan, or insurance, or against any entity (including any physician or provider) which has been paid with respect to such item or service under such law, policy, plan, or insurance, and may join or intervene in any action related to the events that gave rise to the need for such item or service. The United States shall be subrogated (to the extent of payment made under this subchapter for an item or service) to any right of an individual or any other entity to payment with respect to such item or service under such a law, policy, plan, or insurance."

Subsec. (b)(2)(B). Pub. L. 98-369, § 2344(b), substituted "has been or could be made under a plan" for "has been made under a plan", and inserted "In order to recover payment made under this subchapter for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a plan, or against any entity

(including any physician or provider) which has been paid with respect to such item or service under such plan, and may join or intervene in any action related to the events that gave rise to the need for sueh item or service. The United States shall be subrogated (to the extent of payment made under this subchapter for an item or service) to any right of an individual or any other entity to payment with respect to such item or service under such a plan."

Subsec. (b)(3)(A)(i). Pub. L. 98-369, § 2301(a), struck out "over 64 but" before "under 70 years" in two places.

Subsec. (b)(3)(A)(ii). Pub. L. 08-369, § 2344(c), substituted "has been or could be made under a group health plan" for "has been made under a group health plan", and inserted "In order to recover payment made under this title for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a plan, or against any entity (including any physician or provider) which has been paid with respect to such item or service under such plan, and may join or intervene in any action related to the events that gave rise to the need for such item or service. The United States shall be subrogated (to the extent of payment made under this title for an item or service) to any right of an individual or any other entity te payment with respect to such item or service under such a plan."

Subsec. (b)(3)(A)(iii). Pub. L. 98-369, § 2354(b)(31), inserted "before the month" after "ending with the month".

Subsec. (h). Pub. L. 98-369, § 2304(c), added subsec. (h).

Subsec. (i). Pub. L. 98-369, § 2313(c), added subsec. (i).

1983—Subsec. (a)(1)(A). Pub. L. 98-21, § 601(f)(1), inserted reference to subpar. (D).

Subsec. (a)(1)(D). Pub. L. 98-21, § 601(f)(2)-(4), added subpar. (D).

Subsec. (a)(14). Pub. L. 98-21, § 602(e), added par. (14).

Effective Date of 1986 Amendments

Section 9319(f) of Pub. L. 99-509 provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [enacting section 5000 of Title 26, Internal Revenue Code, and amending sections 1395p, 1395r, and 1395y of this title] shall apply to items and services furnished on or after January 1, 1987.

"(2) The amendments made by subsection (c) [amending sections 1395p and 1395r of this title] shall apply to enrollments occurring on or after January 1, 1987."

Amendment by section 9343(c)(1) of Pub. L. 99-509 applicable to contracts entered into or renewed after Jan. 1, 1987, see section 9343(h)(4) of Pub. L. 99-509, set out as a note under section 1395l of this title.

Section 9201(d)(1) of Pub. L. 99-272 provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to items and services furnished on or after May 1, 1986."

Amendment by section 9307(a) of Pub. L. 99-272 applicable to services performed on or after Apr. 1, 1986, see section 9307(e) of Pub. L. 99-272, set out as a note under section 1320c-3 of this title.

Amendment by section 9320(h)(1) of Pub. L. 09-509 applicable to services furnished on or after Jan. 1, 1989, see section 0320(i) of Pub. L. 99-509, set out as a note under section 1395k of this title.

Effective Date of 1984 Amendment

Section 2301(c)(1) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending this section] shall be effective with respect to items and services furnished on or after January 1, 1985."

Amendment by section 2304(c) of Pub. L. 98-369 applicable to pacemaker devices and leads implanted or removed on or after the effective date of final regulations promulgated to carry out such amendment, see section 2304(d) of Pub. L. 98-369, set out as a note below.

Section 2313(e) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 1395y and 1395ww of this title] shall become effective on the date of the enactment of this Act [July 18, 1984]."

Section 2344(d) of Pub. L. 98-369 provided that: "The amendments made by this section [amending subsec. (b) of this section] shall apply to items and services furnished on or after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2354(b)(30), (31) of Pub. L. 98-389 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

Effective Date of 1983 Amendments

Amendment by section 601(f) of Pub. L. 98-21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after Nov. 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98-21, set out as a note under section 1395ww of this title.

Amendment by section 602(e)(3) of Pub. L. 98-21, effective Oct. 1, 1983, see section 604(a)(2) of Pub. L. 98-21, set out as a note under section 1305ww of this title.

Effective Date of 1982 Amendment

Amendment by section 122(f) and (g)(1) of Pub. L. 07-248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97-248, as amended, set out as a note under section 1395c of this title.

Approval of Suroical Assistants for Procedures Performed April 1, 1086, to December 15, 1988

Section 1895(b)(16)(C) of Pub. L. 99-514 provided that: "For purposes of section 1862(a)(15) of the Social Security Act (42 U.S.C. 1305y(a)(15)), added by section 9307(a)(3) of COBRA, and for surgical procedures performed during the period beginning on April 1, 1986, and ending on December 15, 1986, a carrier is deemed to have approved the use of an assistant in a surgical procedure, before the surgery is performed, based on the existence of a complicating medical condition if the carrier determines after the surgery is performed that the use of the assistant in the procedure was appropriate based on the existence of a complicating medical condition before or during the surgery."

Extending Waiver of Liability Provisions to Hospice Programs

Section 9305(f) of Pub. L. 99-509 provided that:

"(1) In general.—The Secretary of Health and Human Services shall, for purposes of determining whether payments to a hospice program should be denied pursuant to section 1862(a)(1)(C) of the Social Security Act [42 U.S.C. 1395y(a)(1)(C)], apply (under section 1879(a) of such Act [42 U.S.C. 1395pp(a)]) a presumption of compliance of 2.5 percent (based on the number of days of hospice care billed) in a manner substantially similar to that provided to home health agencies under policies in effect as of July 1, 1985.

"(2) Effective date.—Paragraph (1) shall apply to hospice care furnished on or after the first day of the first month that begins at least 6 months after the date of the enactment of this Act [Oct. 21, 1986] and before November 1, 1988."

STUDY OF IMPACT ON DISABLED BENEFICIARIES AND FAMILY OF AMENDMENTS RELATING TO LARGE GROUP HEALTH PLANS AND MEDICARE AS SECONDARY PAYER

Section 9319(e) of Pub. L. 99-509 provided that: "The Comptroller General shall study and report to Congress, by not later than March 1, 1990, the impact of the amendments made by this section [enacting section 5000 of Title 26, Internal Revenue Code, and amending sections 1395p, 1395r, and 1395y of this title] on access of disabled individuals and members of their family to employment and health insurance. The report shall include information relating to—

"(1) the number of disabled medicare beneficiaries for whom medicare has become secondary, either through their employment or the employment of a family member;

"(2) the amount of savings to the medicare program achieved annually through this provision; and

"(3) the effect on employment, and employment-based health coverage, of disabled individuals and family members."

REINSTATEMENT OF WAIVER OF LIABILITY PRESUMPTION

Section 9128(c) of Pub. L. 99-272 provided that: "The Secretary of Health and Human Services shall, for purposes of determining whether payments to a skilled nursing facility should be denied pursuant to section 1862(a)(1)(A) of the Social Security Act [42 U.S.C. 1395y(a)(1)(A)], apply the same presumption of compliance (5 percent) as in effect under regulations as of July 1, 1985. Such presumption shall apply for the 30-month period beginning with the first month beginning after the date of the enactment of this Act [Apr. 7, 1986]."

HOME HEALTH WAIVER OF LIABILITY

Section 9205 of Pub. L. 99-272 provided that: "The Secretary of Health and Human Services shall, for purposes of determining whether payments to a home health agency should be denied pursuant to section 1862(a)(1)(A) of the Social Security Act [42 U.S.C. 1395y(a)(1)(A)], apply a presumption of compliance (2.5 percent) in the same manner as under the regulations in effect as of July 1, 1985. Such presumption shall apply until 12 months after the date on which ten regional intermediaries have commenced operations to service home health agencies, as required under section 1816(e)(4) of the Social Security Act [42 U.S.C. 1395h(e)(4)]."

RECOMMENDATIONS AND GUIDELINES FOR ELIMINATION OF ASSISTANTS AT SURGERY; REPORT TO CONGRESS

Section 9307(d) of Pub. L. 99-272 provided that the Secretary of Health and Human Services, after consultation with the Physician Payment Review Commission, develop recommendations and guidelines respecting other surgical procedures for which an assistant at surgery was generally not medically necessary and circumstances under which use of an assistant at surgery was generally appropriate but should be subject to prior approval of an appropriate entity and that the Secretary report to Congress, not later than January 1, 1987, on these recommendations and guidelines.

PACEMAKER REIMBURSEMENT REVIEW AND REFORM; PROMULGATION OF REGULATIONS; EFFECTIVE DATE OF PACEMAKER REGISTRATION

Section 2304(d) of Pub. L. 98-369 provided that: "The Secretary of Health and Human Services shall promulgate final regulations to carry out this section and the amendment made by this section [enacting subsec. (h) of this section and enacting a provision set out as a note under section 1395l of this title] prior to January 1, 1985, and the amendment made by subsection (c) [enacting subsec. (h) of this section] shall apply to pacemaker devices and leads implanted or removed on or after the effective date of such regulations."

PAYMENT FOR DEBRIDEMENT OF MYCOTIC TOENAILS

Section 2325 of Pub. L. 98-369 provided that: "The Secretary shall provide, pursuant to section 1862(a) of the Social Security Act [42 U.S.C. 1395y(a)], that payment will not be made under part B of title XVIII of such Act [42 U.S.C. 1395j et seq.] for a physician's debridement of mycotic toenails to the extent such debridement is performed for a patient more frequently than once every 60 days, unless the medical necessity for more frequent treatment is documented by the billing physician."

INTERIM WAIVER IN CERTAIN CASES OF BILLING RULE FOR ITEMS AND SERVICES OTHER THAN PHYSICIANS' SERVICES

Section 602(k) of Pub. L. 98-21, as amended by Pub. L. 99-272, title IX, § 9112(a), Apr. 7, 1986, 100 Stat. 163, provided that:

"(1) The Secretary of Health and Human Services may, for any cost reporting period beginning prior to October 1, 1986, waive the requirements of sections 1862(a)(14) and 1866(a)(1)(H) of the Social Security Act [42 U.S.C. 1395y(a)(14), 1395cc(a)(1)(H)] in the case of a hospital which has followed a practice, since prior to October 1, 1982, of allowing direct billing under part B of title XVIII of such Act [42 U.S.C. 1395j et seq.] for services (other than physicians' services) so extensively, that immediate compliance with those requirements would threaten the stability of patient care. Any such waiver shall provide that such billing may continue to be made under part B of such title but that the payments to such hospital under part A of such title [42 U.S.C. 1395c et seq.] shall be reduced by the amount of the billings for such services under part B of such title. If such a waiver is granted, at the end of the waiver period the Secretary may provide for such methods of payments under part A as is appropriate, given the organizational structure of the institution.

"(2) In the case of a hospital which is receiving payments pursuant to a waiver under paragraph (1), payment of the adjustment for indirect costs of approved educational activities shall be made as if the hospital were receiving under part A of title XVIII of the Social Security Act [42 U.S.C. 1395c et seq.] all the payments which are made under part B of such title [42 U.S.C. 1395j et seq.] solely by reason of such waiver.

"(3) Any waiver granted under paragraph (1) shall provide that, with respect to those items and services billed under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.] solely by reason of such waiver—

"(A) payment under such part shall be equal to 100 percent of the reasonable charge or other applicable payment base for the items and services; and

"(B) the entity furnishing the items and services must agree to accept the amount paid pursuant to subparagraph (A) as the full charge for the items and services."

[Section 9112(b) of Pub. L. 99-272 provided that:

"(1) Section 602(k)(2) of the Social Security Amendments of 1983 (as added by subsection (a) [this note]) shall apply to cost reporting periods beginning on or after January 1, 1986.

"(2) Section 602(k)(3) of the Social Security Amendments of 1983 (as added by subsection (a) [this note]) shall apply to items and services furnished after the end of the 10-day period beginning on the date of the enactment of this Act [Apr. 7, 1986]."]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320a-7a, 1320c, 1320c-3, 1320c-7, 1320c-8, 1395l, 1395p, 1395r, 1395u, 1395x, 1395cc, 1395ff, 1395gg, 1395oo, 1395pp, 1395ww, 1396b of this title; title 26 section 5000; title 45 section 231f.

§ 1395z. Consultation with State agencies and other organizations to develop conditions of participation for providers of services

In carrying out his functions, relating to determination of conditions of participation by providers of services, under subsections (e)(9), (f)(4), (j)(15), (o)(6), (cc)(2)(I), and (dd)(2) of section 1395x of this title, or by ambulatory surgical centers under section 1395k(a)(2)(F)(i) of this title, the Secretary shall consult with appropriate State agencies and recognized national listing or accrediting bodies, and may consult with appropriate local agencies. Such conditions prescribed under any of such subsections may be varied for different areas or different classes of institutions or agencies and may, at the request of a State, provide higher requirements for such State than for other States; except that, in the case of any State or political subdivision of a State which imposes higher requirements on institutions as a condition to the purchase of services (or of certain specified services) in such institutions under a Stato plan approved under subchapter I, XVI, or XIX of this chapter, the Secretary shall impose like requirements as a condition to the payment for services (or for the services specified by the State or subdivision) in such institutions in such State or subdivision.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2335(c), 2349(b)(1), 2354(b)(32), 98 Stat. 1090, 1097, 1102.)

AMENDMENTS

1984—Pub. L. 98-369, § 2335(c), struck out "(g)(4)," after "(e)(9), (f)(4),".

Pub. L. 98-369, § 2354(b)(32), substituted "(j)(15)" for "(j)(11)".

Pub. L. 98-369, § 2349(b)(1), substituted "appropriate State agencies" for "the Health Insurance Benefits Advisory Council established by section 1395dd of this title, appropriate State agencies,".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2335(c) 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 2349(b)(1) of Pub. L. 98-369 effective July 18, 1984, see section 2349(c) of Pub. L. 98-369, set out as a note under section 907a of this title.

Amendment by section 2354(b)(32) of Pub. L. 98-369 effective July 18, 1984, but not te be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-869, set out as a note under section 1320a-1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97-248, as amended, set out as a note under section 1395c of this title.

§ 1395aa. Agreements with States

(a) Use of State agencies to determine compliance by providers of services with conditions of participation

The Secretary shall make an agreement with any State which is able and willing to do so under which the services of the State health agency or other appropriate State agency (or the appropriate local agencies) will be utilized by him for the purpose of determining whether an institution therein is a hospital or skilled nursing facility, or whether an agency therein is a home health agency, or whether an agency is a hospice program or whether a facility therein is a rural health clinic as defined in section 1395x(aa)(2) of this title or a comprehensive outpatient rehabilitation facility as defined in section 1395x(cc)(2) of this title, or whether a laboratory meets the requirements of paragraphs (12) and (13) of section 1395x(s) of this title, or whether a clinic, rehabilitation agency or public health agency meets the requirements of subparagraph (A) or (B), as the case may be, of section 1395x(p)(4) of this title, or whether an ambulatory surgical center meets the standards specified under section 1395k(a)(2)(F)(i) of this title. To the extont that the Secretary finds it appropriate, an institution or agency which such a State (or local) agency certifies is a hospital, skilled nursing facility, rural health clinic, comprehensive outpatient rehabilitation facility, home health agency, or hospice program (as those terms are defined in section 1395x of this title) may be treated as such by the Secretary. Any State agency which has such an agreement may (subject to approval of the Secretary) furnish to a skilled nursing facility, after proper request by such facility, such specialized consultative services (which such agency is able and willing to furnish in a manner satisfactory to the Secretary) as such facility may need to meet one or more of the conditions specified in section 1395x(j) of this title. Any such services furnished by a State agency shall be deemed to have been furnished pursuant to such agreement. Within 90 days following the completion of each survey of any health care facility, ambulatory surgical center, rural health clinic, comprehensive outpatient rehabilitation facility, laboratory, clinic, agency, or organization by the appropriate State or local agency described in the first sentence of this subsection, the Secretary shall make public in readily available form and place the pertinent findings of each such survey relating to the compliance of each such health care facility, ambulatory surgical center, rural health clinic, comprehensive outpatient rehabilitation facility, laboratory, clinic, agency, or organization with (1) the statutory conditions of participation imposed under this subchapter and (2) the major additional conditions which the Secretary finds necessary in the interest of health and safety of individuals who are furnished care or services by any such health care facility, ambulatory surgical center, rural health clinic, comprehensive outpatient rehabilitation facility, laboratory, clinic, agency, or organization.

[*See main edition for text of (b)*]

(c) Use of State or local agencies to survey hospitals

The Secretary is authorized to enter into an agreement with any State under which the appropriate State or local agency which performs

the certification function described in subsection (a) of this section will survey, on a selective sample basis (or where the Secretary finds that a survey is appropriate because of substantial allegations of the existence of a significant deficiency or deficiencies which would, if found to be present, adversely affect health and safety of patients), hospitals which have an agreement with the Secretary under section 1395cc of this title and which are accredited by the Joint Commission on Accreditation of Hospitals. The Secretary shall pay for such services in the manner prescribed in subsection (b) of this section.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2354(b)(17), 98 Stat. 1101; Oct. 21, 1986, Pub. L. 99-509, title IX, § 9320(h)(3), 100 Stat. 2016.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-509 substituted "paragraphs (12) and (13)" for "paragraphs (11) and (12)".

1984—Subsec. (c). Pub. L. 98-369 struck out "the" after "Joint Commission on".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-509 applicable to services furnished on or after Jan. 1, 1989, see section 9320(i) of Pub. L. 99-509, set out as a note under section 1395k of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97-248, as amended, set out as a note under section 1395c of this title.

§ 1395bb. Effect of accreditation

(a) Except as provided in subsection (b) of this section and the second sentence of section 1395z of this title, if—

(1) an institution is accredited as a hospital by the Joint Commission on Accreditation of Hospitals, and

(2) such institution (if it is included within a survey described in section 1395aa(c) of this title) authorizes the Commission to release to the Secretary upon his request (or such State agency as the Secretary may designate) a copy of the most current accreditation survey of such institution made by such Commission,

then, such institution shall be deemed to meet the requirements of the numbered paragraphs of section 1395x(e) of this title; except—

[*See main edition for text of (3) and (4)*]

If such Commission, as a condition for accreditation of a hospital, requires a utilization review plan (or imposes another requirement which serves substantially the same purpose), requires a discharge planning process (or imposes another requirement which serves substantially the same purpose), or imposes a standard which the Secretary determines is at least equivalent to the standard promulgated by the Secretary as described in paragraph (4) of this subsection, the Secretary is authorized to find that all institutions so accredited by such Commission comply also with clause (A) or (B) of section 1395x(e)(6) of this title or the standard described in such paragraph (4), as the case may be. In addition, if the Secretary finds that accreditation of an entity by the American Osteopathic Association or any other national accreditation body provides reasonable assurance that any or all of the conditions of section 1395k(a)(2)(F)(i), 1395x(e), 1395x(f), 1395x(j), 1395x(o), 1395x(p)(4)(A) or (B), paragraphs (12) and (13) of section 1395x(s), section 1395x(aa)(2), 1395x(cc)(2), or 1395x(dd)(2) of this title, as the case may be, are met, he may, to the extent he deems it appropriate, treat such entity as meeting the condition or conditions with respect to which he made such finding. The Secretary may not disclose any accreditation survey made and released to him by the Joint Commission on Accreditation of Hospitals, the American Osteopathic Association, or any other national accreditation body, of an entity accredited by such body.

[*See main edition for text of (b)*]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2345(a), 2346(a), 98 Stat. 1096; Oct. 21, 1986, Pub. L. 99-509, title IX, §§ 9305(c)(3), 9320(h)(3), 100 Stat. 1990, 2016.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-509, § 9305(c)(3), inserted ", requires a discharge planning process (or imposes another requirement which serves substantially the same purpose)" after "the same purpose)", and "clause (A) or (B) of" after "comply also with" in second sentence.

Pub. L. 99-509 § 9320(h)(3), substituted "paragraphs (12) and (13)" for "paragraphs (11) and (12)" in third sentence.

1984—Subsec. (a). Pub. L. 98-369, § 2346(a), in provisions following par. (4), substituted "section 1395k(a)(2)(F)(i), 1395x(e), 1395x(f), 1395x(j), 1395x(o), 1395x(p)(4)(A) or (B), paragraphs (11) and (12) of section 1395x(s), section 1395x(aa)(2), 1395x(cc)(2), or 1395x(dd)(2) of this title" for "section 1395x(e), (j), (o), or (dd) of this title", and substituted "entity" for "institution or agency" in two places.

Pub. L. 98-369, § 2345(a), struck out "(on a confidential basis)" after "release to the Secretary" in par. (2), and inserted provision that the Secretary may not disclose any accreditation survey made and released to him by the Joint Commission on Accreditation of Hospitals, the American Osteopathic Association, or any other national accreditation body, of an entity accredited by such body, in provisions following par. (4).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 9305(c)(3) of Pub. L. 99-509 applicable to hospitals as of one year after Oct. 21, 1986, see section 9305(c)(4) of Pub. L. 99-509, set out as a note under section 1395x of this title.

Amendment by section 9320(h)(3) of Pub. L. 99-509 applicable to services furnished on or after Jan. 1, 1989, see section 9320(i) of Pub. L. 99-509 set out as a note under section 1395k of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2345(b) of Pub. L. 98-369 provided that: "The amendments made by this section [amending

this section] shall become effective on the date of the enactment of this Act [July 18, 1984], and shall apply with respect to surveys released to the Secretary on, before, or after such date."

Section 2346(b) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984]."

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 122(g)(4) of Pub. L. 97-248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97-248, as amended, set out as a note under section 1395c of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320c-9, 1395x of this title.

§ 1395cc. Agreements with providers of services

(a) Filing of agreements; eligibility for payment; charges with respect to items and services

(1) Any provider of services (except a fund designated for purposes of section 1395f(g) and section 1395n(e) of this title) shall be qualified to participate under this subchapter and shall be eligible for payments under this subchapter if it files with the Secretary an agreement—

[*See main edition for text of (A) to (C)*]

(D) to promptly notify the Secretary of its employment of an individual who, at any time during the year preceding such employment, was employed in a managerial, accounting, auditing, or similar capacity (as determined by the Secretary by regulation) by an agency or organization which serves as a fiscal intermediary or carrier (for purposes of part A or part B, or both, of this subchapter) with respect to the provider,

(E) to release data with respect to patients of such provider upon request to an organization having a contract with the Secretary under part B of subchapter XI of this chapter as may be necessary (i) to allow such organization to carry out its functions under such contract, or (ii) to allow such organization to carry out similar review functions under any contract the organization may have with a private or public agency paying for health care in the same area with respect to patients who authorize release of such data for such purposes,

(F)(i) in the case of hospitals which provide inpatient hospital services for which payment may be made under subsection (b), (c), or (d) of section 1395ww of this title, to maintain an agreement with a professional standards review organization (if there is such an organization in existence in the area in which the hospital is located) or with a utilization and quality control peer review organization which has a contract with the Secretary under part B of subchapter XI of this chapter for the area in which the hospital is located, under which the organization will perform functions under that part with respect to the review of the validity of diagnostic information provided by such hospital, the completeness, adequacy, and quality of care provided, the appropriateness of admissions and discharges, and the appropriateness of care provided for which additional payments are sought under section 1395ww(d)(5) of this title, with respect to inpatient hospital services for which payment may be made under part A of this subchapter (and for purposes of payment under this subchapter, the cost of such agreement to the hospital shall be considered a cost incurred by such hospital in providing inpatient services under part A of this subchapter, and (I) shall be paid directly by the Secretary to such organization on behalf of such hospital in accordance with a rate per review established by the Secretary, (II) shall be transferred from the Federal Hospital Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and (III) shall not be less in the aggregate for a fiscal year than the aggregate amount expended in fiscal year 1986 for direct and administrative costs (adjusted for inflation))[5] of such reviews,

(ii) in the case of hospitals, skilled nursing facilities, and home health agencies, to maintain an agreement with a utilization and quality control peer review organization (which has a contract with the Secretary under part B of subchapter XI of this chapter for the area in which the hospital, facility, or agency is located) to perform the functions described in paragraph (4)(A);[6]

(G) in the case of hospitals which provide inpatient hospital services for which payment may be made under subsection (b) or (d) of section 1395ww of this title, not to charge any individual or any other person for inpatient hospital services for which such individual would be entitled to have payment made under part A of this subchapter but for a denial or reduction of payments under section 1395ww(f)(2) of this title,

(H) in the case of hospitals which provide services for which payment may be made under this subchapter, to have all items and services (other than physicians' services as defined in regulations for purposes of section 1395y(a)(14) of this title, and other than services of a certified registered nurse anesthetist) (i) that are furnished to an individual who is a patient of the hospital, and (ii) for which the individual is entitled to have payment made under this subchapter, furnished by the hospital or otherwise under arrangements (as defined in section 1395x(w)(1) of this title) made by the hospital,

(I) in the case of a hospital, to comply with the requirements of section 1395dd of this title to the extent applicable,

(J) in the case of hospitals which provide inpatient hospital services for which payment may be made under this subchapter, to be a participating provider of medical care under any health plan contracted for under section 1079 or 1086 of title 10, or under section 613 of title 38, in accordance with admission prac-

[5] So in original.

[6] So in original. The semicolon probably should be a comma.

tices, payment methodology, and amounts as prescribed under joint regulations issued by the Secretary and by the Secretaries of Defense and Transportation, in implementation of sections 1079 and 1086 of title 10,

(K) not to charge any individual or any other person for items or services for which payment under this subchapter is denied under section 1320c-3(a)(2) of this title by reason of a determination under section 1320c-3(a)(1)(B) of this title,

(L) in the case of hospitals which provide inpatient hospital services for which payment may be made under this subchapter, to be a participating provider of medical care under section 603 of title 38, in accordance with such admission practices, and such payment methodology and amounts, as are prescribed under joint regulations issued by the Secretary and by the Administrator of Veterans' Affairs in implementation of such section,

(M) in the case of hospitals, to provide to each individual who is entitled to benefits under part A of this subchapter (or to a person acting on the individual's behalf), at or about the time of the individual's admission as an inpatient to the hospital, a written statement (containing such language as the Secretary prescribes consistent with this paragraph) which explains—

(i) the individual's rights to benefits for inpatient hospital services and for post-hospital services under this subchapter,

(ii) the circumstances under which such an individual will and will not be liable for charges for continued stay in the hospital,

(iii) the individual's right to appeal denials of benefits for continued inpatient hospital services, including the practical steps to initiate such an appeal, and

(iv) the individual's liability for payment for services if such a denial of benefits is upheld on appeal,

and which provides such additional information as the Secretary may specify, and

(N) in the case of hospitals—

(i) to make available to its patients the directory or directories of participating physicians (published under section 1395u(h)(4) of this title) for the area served by the hospital, and

(ii) if hospital personnel (including staff of any emergency or outpatient department) refer a patient to a nonparticipating physician for further medical care on an outpatient basis, the personnel must inform the patient that the physician is a nonparticipating physician and, whenever practicable, must identify at least one qualified participating physician who is listed in such a directory and from whom the patient may receive the necessary services.

In the case of a hospital which has an agreement in effect with an organization described in subparagraph (F), which organization's contract with the Secretary under part B of subchapter XI of this chapter is terminated on or after October 1, 1984, the hospital shall not be determined to be out of compliance with the requirement of such subparagraph during the six month period beginning on the date of the termination of that contract.

(2)(A) A provider of services may charge such individual or other person (i) the amount of any deduction or coinsurance amount imposed pursuant to section 1395e(a)(1), (a)(3), or (a)(4), section 1395*l*(b), or section 1395x(y)(3) of this title with respect to such items and services (not in excess of the amount customarily charged for such items and services by such provider), and (ii) an amount equal to 20 per centum of the reasonable charges for such items and services (not in excess of 20 per centum of the amount customarily charged for such items and services by such provider) for which payment is made under part B of this subchapter or which are durable medical equipment furnished as home health services (but in the case of items and services furnished to individuals with end-stage renal disease, an amount equal to 20 percent of the estimated amounts for such items and services calculated on the basis established by the Secretary). In the case of items and services described in section 1395*l*(c) of this title, clause (ii) of the preceding sentence shall be applied by substituting for 20 percent the proportion which is appropriate under such section. A provider of services may not impose a charge under clause (ii) of the first sentence of this subparagraph with respect to items and services described in section 1395x(s)(10)(A) of this title, with respect to items and services furnished in connection with obtaining a second opinion required under section 1320c-13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion), and with respect to clinical diagnostic laboratory tests for which payment is made under part B of this subchapter.

(B) [*See main edition for text of* (i)]

(ii) Where a provider of services customarily furnishes an individual items or services which are more expensive than the items or services determined to be necessary in the efficient delivery of needed health services under this subchapter and which have not been requested by such individual, such provider may (except with respect to emergency services and except with respect to inpatient hospital costs with respect to which amounts are payable under section 1395ww(d) of this title) also charge such individual or other person for such more expensive items or services to the extent that the costs of (or, if less, the customary charges for) such more expensive items or services experienced by such provider in the second fiscal period immediately preceding the fiscal period in which such charges are imposed exceed the cost of such items or services determined to be necessary in the efficient delivery of needed health services, but only if—

[*See main edition for text of* (I) *and* (II), (C) *and* (D), (3)]

(4)(A) Under the agreement required under paragraph (1)(F)(ii), the peer review organization must perform functions (other than those covered under an agreement under paragraph (1)(F)(i)) under the third sentence of section 1320c-3(a)(4)(A) of this title and under section

1320c-3(a)(14) of this title with respect to services, furnished by the hospital, facility, or agency involved, for which payment may be made under this subchapter.

(B) For purposes of payment under this subchapter, the cost of such an agreement to the hospital, facility, or agency shall be considered a cost incurred by such hospital, facility, or agency in providing covered services under this subchapter and shall be paid directly by the Secretary to the peer review organization on behalf of such hospital, facility, or agency in accordance with a schedule established by the Secretary.

(C) Such payments—

(i) shall be transferred in appropriate proportions from the Federal Hospital Insurance Trust Fund and from the Federal Supplementary Medical Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and

(ii) shall not be less in the aggregate for hospitals, facilities, and agencies for a fiscal year than the amounts the Secretary determines to be sufficient to cover the costs of such organizations' conducting the activities described in subparagraph (A) with respect to such hospitals, facilities, or agencies under part B of subchapter XI of this chapter.

(b) Termination of agreements

An agreement with the Secretary under this section may be terminated—

[*See main edition for text of (1) and (2)*]

Any termination shall be applicable—

(3) in the case of inpatient hospital services (including inpatient psychiatric hospital services) or post-hospital extended care services, with respect to services furnished after the effective date of such termination, except that payment may be made for up to thirty days with respect to inpatient institutional services furnished to any eligible individual who was admitted to such institution prior to the effective date of such termination,

(4)(A) with respect to home health services or hospice care furnished to an individual under a plan therefor established on or after the effective date of such termination, or (B) if a plan is established before such effective date, with respect to such services furnished to such individual more than 30 days after such effective date, and

[*See main edition for text of (5); (c)*]

(d) Decision to withhold payment for failure to review long-stay cases

If the Secretary finds that there is a substantial failure to make timely review in accordance with section 1395x(k) of this title of long-stay cases in a hospital or skilled nursing facility, he may, in lieu of terminating his agreement with such hospital or facility, decide that, with respect to any individual admitted to such hospital or facility after a subsequent date specified by him, no payment shall be made under this subchapter for inpatient hospital services (including inpatient psychiatric hospital services) after the 20th day of a continuous period of such services or for post-hospital extended care services after such day of a continuous period of such care as is prescribed in or pursuant to regulations, as the case may be. Such decision may be made effective only after such notice to the hospital, or (in the case of a skilled nursing facility) to the facility and the hospital or hospitals with which it has a transfer agreement, and to the public, as may be prescribed by regulations, and its effectiveness shall terminate when the Secretary finds that the reason therefor has been removed and that there is reasonable assurance that it will not recur. The Secretary shall not make any such decision except after reasonable notice and opportunity for hearing to the institution or agency affected thereby.

(e) "Provider of services" defined

For purposes of this section, the term "provider of services" shall include a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or agency meets the requirements of section 1395x(p)(4)(A) of this title (or meets the requirements of such section through the operation of section 1395x(g) of this title), or if, in the case of a public health agency, such agency meets the requirements of section 1395x(p)(4)(B) of this title (or meets the requirements of such section through the operation of section 1395x(g) of this title), but only with respect to the furnishing of outpatient physical therapy services (as therein defined) or (through the operation of section 1395x(g) of this title) with respect to the furnishing of outpatient occupational therapy services.

[*See main edition for text of (f)*]

(g) Penalties for improper billing

Except as permitted under subsection (a)(2) of this section, any person who knowingly and willfully presents, or causes to be presented, a bill or request for payment for a hospital outpatient service for which payment may be made under part B of this subchapter and such bill or request violates an arrangement under subsection (a)(1)(H) of this section, is subject to a civil monetary penalty of not to exceed $2,000. Such a penalty shall be imposed in the same manner as civil monetary penalties are imposed under section 1320a-7a of this title with respect to actions described in subsection (a) of that section.

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, § 602(f), (*l*), 97 Stat. 163, 166; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2303(f), 2315(d), 2321(c), 2323(b)(3), 2335(d), 2347(a), 2348(a), 2354(b)(33), (34), 98 Stat. 1066, 1080, 1084, 1086, 1090, 1096, 1097, 1102; Apr. 7, 1986, Pub. L. 99-272, title IX, §§ 9121(a), 9122(a), 9401(b)(2)(F), 9402(a), 9403(b), 100 Stat. 164, 167, 199, 200; Oct. 21, 1986, Pub. L. 99-509, title IX, §§ 9305(b)(1), 9320(h)(2), 9332(e)(1), 9337(c)(2), 9343(c)(2), (3), 9353(e)(1), 100 Stat. 1989, 2016, 2025, 2034, 2040, 2047; Oct. 22, 1986, Pub. L. 99-514, title XVIII, § 1895(b)(5), 100

Stat. 2933; Oct. 28, 1986, Pub. L. 99-576, title II, § 233(a), 100 Stat. 3265.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsecs. (a) and (g), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Part B of subchapter XI of this chapter, referred to in subsec. (a)(1), (4)(C)(ii), is classified to section 1320c et seq. of this title.

AMENDMENTS

1986—Subsec. (a)(1)(F). Pub. L. 99-509, § 9353(e)(1)(A), designated existing provisions as cl. (i) and in cl. (i), as so designated, redesignated former cls. (i) to (iii) as subcls. (I) to (III), and added cl. (ii).

Pub. L. 99-272, § 9402(a), redesignated cl. (iv) as (iii) and in cl. (iii), as so redesignated, substituted "1986" for "1982", and struck out former cl. (iii) which provided that the cost of such agreement to the hospital shall not be less than amount which reflects the rates per review established in fiscal year 1982 for both direct and administrative costs (adjusted for inflation).

Subsec. (a)(1)(H). Pub. L. 99-509, § 9343(c)(2), struck out "inpatient hospital" after "hospitals which provide" and substituted "a patient" for "an inpatient".

Pub. L. 99-509, § 9320(h)(2), inserted ", and other than services of a certified registered nurse anesthetist" after "section 1395y(a)(14) of this title".

Subsec. (a)(1)(I). Pub. L. 99-514 redesignated subpar. (I) relating to agreement not to charge for certain items and services as subpar. (K).

Pub. L. 99-272, § 9403(b), added subpar. (I) relating to agreement not to charge for certain items or services.

Pub. L. 99-272, § 9121(a), added subpar. (I) relating to compliance with the requirements of section 1305dd of this title.

Subsec. (a)(1)(J). Pub. L. 99-272, § 9122(a), added subpar. (J).

Subsec. (a)(1)(K). Pub. L. 99-514 redesignated subpar. (I) relating to agreement not to charge for certain items and services as subpar. (K).

Subsec. (a)(1)(L). Pub. L. 99-576 added subpar. (L).

Subsec. (a)(1)(M). Pub. L. 99-509, § 9305(b)(1), added subpar. (M).

Subsec. (a)(1)(N). Pub. L. 99-509, § 9332(e)(1), added subpar. (N).

Subsec. (a)(2)(A). Pub. L. 99-272, § 9401(b)(2)(F), inserted ", with respect to items and services furnished in connection with obtaining a second opinion required under section 1320c-13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion)," after "1395x(s)(10)(A) of this title" in last sentence.

Subsec. (a)(4). Pub. L. 99-509, § 9353(e)(1)(B), added par. (4).

Subsec. (e). Pub. L. 99-509, § 9337(c)(2), inserted in second sentence "(or meets the requirements of such section through the operation of section 1395x(g) of this title)" in two places, and inserted "or (through the operation of section 1395x(g) of this title) with respect to the furnishing of outpatient occupational therapy services" after "(as therein defined)".

Subsec. (g). Pub. L. 99-509, § 9343(c)(3), added subsec. (g).

1984—Subsec. (a)(1)(E). Pub. L. 98-369, § 2354(b)(33), inserted a comma at end.

Subsec. (a)(1)(F). Pub. L. 98-369, § 2315(d), substituted "(b), (c), or (d)" for "(e) or (d)".

Pub. L. 98-369, § 2347(a)(1), substituted "maintain an agreement with a professional standards review organization (if there is such an organization in existence in the area in which the hospital is located) or with a utilization and quality control peer review organization which has a contract with the Secretary under part B of subchapter XI of this chapter for the area in which the hospital is located, under which the organization" for "maintain an agreement with a utilization and quality control peer review organization (if there is such an organization which has a contract with the Secretary under part B of subchapter XI of this chapter for the area in which the hospital is located) under which the organization".

Pub. L. 98-369, § 2347(a)(2), repealed amendment made by Pub. L. 98-21, § 602(*l*)(1). See 1983 Amendment note below.

Subsec. (a)(2)(A). Pub. L. 98-369, § 2303(f), inserted "and with respect to clinical diagnostic laboratory tests" after "section 1395x(s)(10) of this title".

Pub. L. 98-369, § 2321(c), inserted "or which are durable medical equipment furnished as home health services" after "part B of this subchapter".

Pub. L. 98-369, § 2323(b)(3), substituted "section 1395x(s)(10)(A) of this title" for "section 1395x(s)(10) of this title".

Subsec. (b)(3). Pub. L. 98-369, § 2335(d)(1), substituted "(including inpatient psychiatric hospital services)" for "(including tuberculosis hospital services and inpatient psychiatric hospital services)".

Pub. L. 98-369, § 2354(b)(34), realigned margin of par. (3).

Subsec. (b)(4). Pub. L. 98-369, § 2348(a), substituted "more than 30 days after such effective date" for "after the calendar year in which such termination is effective".

Subsec. (d). Pub. L. 98-369, § 2335(d)(2), substituted "(including inpatient psychiatric hospital services)" for "(including inpatient tuberculosis hospital services and inpatient psychiatric hospital services)".

1983—Subsec. (a)(1). Pub. L. 98-21, § 602(*l*)(2), inserted provision at end of par. (1) that in the case of a hospital which has an agreement in effect with an organization described in subparagraph (F), which organization's contract with the Secretary under part B of subchapter XI terminates on or after October 1, 1984, the hospital shall not be determined to be out of compliance with the requirement of such subparagraph during the six month period beginning on the date of the termination of that contract.

Subsec. (a)(1)(F). Pub. L. 98-21, § 602(*l*)(1), which provided that, effective Oct. 1, 1984, subpar. (F) is amended by substituting "(with an organization" for "(if there is such an organization", was repealed by Pub. L. 98-369, § 2347(a)(2), effective July 18, 1984.

Subsec. (a)(1)(F) to (H). Pub. L. 98-21, § 602(f)(1), added subpars. (F) to (H).

Subsec. (a)(2)(B)(ii). Pub. L. 98-21, § 602(f)(2), inserted "and except with respect to inpatient hospital costs with respect to which amounts are payable under section 1395ww(d) of this title" after "(except with respect to emergency services)" in provision preceding subcl. (I).

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 233(b) of Pub. L. 99-576 provided that: "The amendments made by subsection (a) [amending this section] shall apply to inpatient hospital services provided pursuant to admissions to hospitals occurring after June 30, 1987."

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.

Section 9305(b)(2) of Pub. L. 99-509 provided that: "The Secretary of Health and Human Services shall first prescribe the language required under section 1866(a)(1)(M) of the Social Security Act [42 U.S.C. 1395cc(a)(1)(M)] not later than six months after the date of the enactment of this Act [Oct. 21, 1986]. The requirement of such section shall apply to admissions to hospitals occurring on such date (not later than 60 days after the date such language is first prescribed) as the Secretary shall provide."

Amendment by section 9320(h)(2) of Pub. L. 99-509 applicable to services furnished on or after Jan. 1, 1989, see section 9320(i) of Pub. L. 99-509, set out as a note under section 1395k of this title.

Section 9332(e)(2) of Pub. L. 99-509 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to agreements under section 1866(a) of the Social Security Act [42 U.S.C. 1395cc(a)] as of October 1, 1987."

Amendment by section 9337(c)(2) of Pub. L. 99-509 applicable to expenses incurred for outpatient occupational therapy services furnished on or after July 1, 1987, see section 9337(e) of Pub. L. 99-509, set out as a note under section 1395k of this title.

Amendment by section 9343(c)(2), (3) of Pub. L. 99-509 applicable to contracts entered into or renewed after Jan. 1, 1987, see section 9343(h)(4) of Pub. L. 99-509, set out as a note under section 1395*l* of this title.

Section 9353(e)(3)(A) of Pub. L. 99-509 provided that: "The amendments made by paragraph (1) [amending this section] shall apply to provider agreements as of October 1, 1987."

Amendment by section 9121(a) of Pub. L. 99-272 effective on first day of first month that begins at least 90 days after Apr. 7, 1986, see section 9121(c) of Pub. L. 99-272, set out as a note under section 1395dd of this title.

Section 9122(b) of Pub. L. 99-272, as amended by Pub. L. 99-514, title XVIII, § 1895(b)(6), Oct. 22, 1986, 100 Stat. 2933, provided that: "The amendments made by subsection (a) [amending this section] shall apply to inpatient hospital services provided pursuant to admissions to hospitals occurring on or after January 1, 1987."

Section 9402(c)(1) of Pub. L. 99-272 provided that: "The amendments made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986]."

Amendment by section 9403(b) of Pub. L. 99-272 effective Apr. 7, 1986, see section 9403(c) of Pub. L. 99-272, set out as a note under section 1320c-3 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2303(f) of Pub. L. 98-369 applicable to clinical diagnostic laboratory tests furnished on or after July 1, 1984, but not applicable to clinical diagnostic laboratory tests furnished to inpatients of a provider operating under a waiver granted pursuant to section 602(k) of Pub. L. 98-21, set out as a note under section 1395y of this title, see section 2303(j)(1) and (3) of Pub. L. 98-369, set out as a note under section 1395*l* of this title.

Amendment by section 2315(d) of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2315(g) of Pub. L. 98-369, set out as an Effective and Termination Dates of 1984 Amendment note under section 1395ww of this title.

Amendment by section 2321(c) of Pub. L. 98-369 applicable to items and services furnished on or after July 18, 1984, see section 2321(g) of Pub. L. 98-369, set out as a note under section 1395f of this title.

Amendment by section 2323(b)(3) of Pub. L. 98-369 applicable to services furnished on or after Sept. 1, 1984, see section 2323(d) of Pub. L. 98-369, set out as a note under section 1395*l* of this title.

Amendment by section 2335(d) 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 2347(a) of Pub. L. 98-369 effective July 18, 1984, see section 2347(d) of Pub. L. 98-369, set out as a note under section 1320c-2 of this title.

Section 2348(b) of Pub. L. 98-369 provided that: "The amendment made by this section [amending this section] shall apply to terminations issued on or after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2354(b)(33), (34) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 602(*l*) of Pub. L. 98-21, as amended by Pub. L. 98-369, div. B, title III, § 2347(a)(2), July 18, 1984, 98 Stat. 1096, provided in part that the amendment by section 602(*l*) is effective Oct. 1, 1984.

Amendment by section 602(f)(2) of Pub. L. 98-21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after Nov. 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98-21, set out as a note under section 1395ww of this title.

Subsec. (a)(1)(F) to (H) of this section, as added by section 602(f)(1)(C) of Pub. L. 98-21, effective Oct. 1, 1983, see section 604(a)(2) of Pub. L. 98-21, set out as a note under section 1395ww of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 122(g)(5) and (6) of Pub. L. 97-248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97-248, as amended, set out as a note under section 1395c of this title.

REPORTS TO CONGRESS ON NUMBER OF HOSPITALS TERMINATING OR NOT RENEWING PROVIDER AGREEMENTS

Section 233(c) of Pub. L. 99-576 provided that:

"(1) The Secretary of Health and Human Services shall periodically submit to the Congress a report on the number of hospitals that have terminated or failed to renew an agreement under section 1866 of the Social Security Act [this section] as a result of the additional conditions imposed under the amendments made by subsection (a) [amending this section].

"(2) Not later than October 1, 1987, the Administrator of Veterans' Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report regarding implementation of this section [amending this section]. Thereafter, the Administrator shall notify such committees if any hospital terminates or fails to renew an agreement described in paragraph (1) for the reasons described in that paragraph."

Section 9122(d) of Pub. L. 99-272 provided that: "The Secretary of Health and Human Services shall report to Congress periodically on the number of hospitals that have terminated or failed to renew an agreement under section 1866 of the Social Security Act [this section] as a result of the additional conditions imposed under the amendments made by subsection (a) [amending this section]."

DELAY IN IMPLEMENTATION OF REQUIREMENT THAT HOSPITALS MAINTAIN AGREEMENTS WITH UTILIZATION AND QUALITY CONTROL PEER REVIEW ORGANIZATION

Section 2347(b) of Pub. L. 98-369 provided that: "Notwithstanding section 604(a)(2) of the Social Security Amendments of 1983 [section 604(a)(2) of Pub. L. 98-21, set out as an Effective Date of 1983 Amendment note under section 1395ww of this title], the requirement that a hospital maintain an agreement with a utilization and quality control peer review organization, as contained in section 1866(a)(1)(F) of the Social Security Act [subsec. (a)(1)(F) of this section], shall become effective on November 15, 1984."

INTERIM WAIVER IN CERTAIN CASES OF BILLING RULE FOR ITEMS AND SERVICES OTHER THAN PHYSICIANS' SERVICES

For authority to waive the requirements of subsec. (a)(1)(H) of this section for any cost period prior to Oct. 1, 1986, where immediate compliance would threaten the stability of patient care, see section 602(k) of Pub. L. 98-21, set out as a note under section 1395y of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320a-7, 1320a-7a, 1395f, 1395l, 1395n, 1395x, 1395y, 1395aa, 1395dd, 1395ff, 1395mm, 1395tt, 1395vv, 1395ww, 1396b, 1396l, 1396m of this title.

§ 1395dd. Examination and treatment for emergency medical conditions and women in active labor

(a) Medical screening requirement

In the case of a hospital that has a hospital emergency department, if any individual (whether or not eligible for benefits under this subchapter) comes to the emergency department and a request is made on the individual's behalf for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the hospital's emergency department to determine whether or not an emergency medical condition (within the meaning of subsection (e)(1) of this section) exists or to determine if the individual is in active labor (within the meaning of subsection (e)(2) of this section).

(b) Necessary stabilizing treatment for emergency medical conditions and active labor

(1) In general

If any individual (whether or not eligible for benefits under this subchapter) comes to a hospital and the hospital determines that the individual has an emergency medical condition or is in active labor, the hospital must provide either—

(A) within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition or to provide for treatment of the labor, or

(B) for transfer of the individual to another medical facility in accordance with subsection (c) of this section.

(2) Refusal to consent to treatment

A hospital is deemed to meet the requirement of paragraph (1)(A) with respect to an individual if the hospital offers the individual the further medical examination and treatment described in that paragraph but the individual (or a person acting on the individual's behalf) refuses to consent to the examination or treatment.

(3) Refusal to consent to transfer

A hospital is deemed to meet the requirement of paragraph (1) with respect to an individual if the hospital offers to transfer the individual to another medical facility in accordance with subsection (c) of this section but the individual (or a person acting on the individual's behalf) refuses to consent to the transfer.

(c) Restricting transfers until patient stabilized

(1) Rule

If a patient at a hospital has an emergency medical condition which has not been stabilized (within the meaning of subsection (e)(4)(B) of this section) or is in active labor, the hospital may not transfer the patient unless—

(A)(i) the patient (or a legally responsible person acting on the patient's behalf) requests that the transfer be effected, or

(ii) a physician (within the meaning of section 1395x(r)(1) of this title), or other qualified medical personnel when a physician is not readily available in the emergency department, has signed a certification that, based upon the reasonable risks and benefits to the patient, and based upon the information available at the time, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the individual's medical condition from effecting the transfer; and

(B) the transfer is an appropriate transfer (within the meaning of paragraph (2)) to that facility.

(2) Appropriate transfer

An appropriate transfer to a medical facility is a transfer—

(A) in which the receiving facility—

(i) has available space and qualified personnel for the treatment of the patient, and

(ii) has agreed to accept transfer of the patient and to provide appropriate medical treatment;

(B) in which the transferring hospital provides the receiving facility with appropriate medical records (or copies thereof) of the examination and treatment effected at the transferring hospital;

(C) in which the transfer is effected through qualified persounel and transportation equipment, as required including the use of necessary and medically appropriate life support measures during the transfer; and

(D) which meets such other requirements as the Secretary may find necessary in the interest of the health and safety of patients transferred.

(d) Enforcement

(1) As requirement of medicare provider agreement

If a hospital knowingly and willfully, or negligently, fails to meet the requirements of this section, such hospital is subject to—

(A) termination of its provider agreement under this subchapter in accordance with section 1395cc(b) of this title, or

(B) at the option of the Secretary, suspension of such agreement for such period of time as the Secretary determines to be appropriate, upon reasonable notice to the hospital and to the public.

(2) Civil monetary penalties

In addition to the other grounds for imposition of a civil money penalty under section 1320a-7a(a) of this title, a participating hospital that knowingly violates a requirement of this section and the responsible physician in the hospital with respect to such a violation are each subject, under that section, to a civil money penalty of not more than $25,000 for each such violation. As used in the previous sentence, the term "responsible physician" means, with respect to a hospital's violation of a requirement of this section, a physician who—

(A) is employed by, or under contract with, the participating hospital, and

(B) acting as such an employee or under such a contract, has professional responsibility for the provision of examinations or treatments for the individual, or transfers of the individual, with respect to which the violation occurred.

(3) Civil enforcement

(A) Personal harm

Any individual who suffers personal harm as a direct result of a participating hospital's violation of a requirement of this section may, in a civil action against the participating hospital, obtain those damages available for personal injury under the law of the State in which the hospital is located, and such equitable relief as is appropriate.

(B) Financial loss to other medical facility

Any medical facility that suffers a financial loss as a direct result of a participating hospital's violation of a requirement of this section may, in a civil action against the participating hospital, obtain those damages available for financial loss, under the law of the State in which the hospital is located, and such equitable relief as is appropriate.

(C) Limitations on actions

No action may be brought under this paragraph more than two years after the date of the violation with respect to which the action is brought.

(e) Definitions

In this section:

(1) The term "emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

(A) placing the patient's health in serious jeopardy,

(B) serious impairment to bodily functions, or

(C) serious dysfunction of any bodily organ or part.

(2) The term "active labor" means labor at a time at which—

(A) delivery is imminent,

(B) there is inadequate time to effect safe transfer to another hospital prior to delivery, or

(C) a transfer may pose a threat of [1] the health and safety of the patient or the unborn child.

(3) The term "participating hospital" means hospital that has entered into a provider agreement under section 1395cc of this title.

(4)(A) The term "to stabilize" means, with respect to an emergency medical condition, to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from the transfer of the individual from a facility.

(B) The term "stabilized" means, with respect to an emergency medical condition, that no material deterioration of the condition is likely, within reasonable medical probability, to result from the transfer of the individual from a facility.

(5) The term "transfer" means the movement (including the discharge) of a patient outside a hospital's facilities at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the hospital, but does not include such a movement of a patient who (A) has been declared dead, or (B) leaves the facility without the permission of any such person.

(f) Preemption

The provisions of this section do not preempt any State or local law requirement, except to the extent that the requirement directly conflicts with a requirement of this section.

(Aug. 14, 1935, ch. 531, title XVIII, § 1867, as added Apr. 7, 1986, Pub. L. 99-272, title IX, § 9121(b), 100 Stat. 164, and amended Oct. 21, 1986, Pub. L. 99-509, title IX, § 9307(c)(4), 100 Stat. 1996; Oct. 22, 1986, Pub. L. 99-514, title XVIII, § 1895(b)(4), 100 Stat. 2933.)

PRIOR PROVISIONS

A prior section 1395dd, act Aug. 14, 1935, ch. 531, title XVIII, § 1867, as added July 30, 1965, Pub. L. 89-97, title I, § 102(a), 79 Stat. 329, and amended Jan. 2, 1968, Pub. L. 90-248, title I, § 164(a), 81 Stat. 873; Oct. 30, 1972, Pub. L. 92-603, title II, § 288, 86 Stat. 1457, which related to creation, composition, meetings, and functions of the Health Insurance Benefits Advisory Council and the appointment of a Chairman and members thereto, and qualifications, terms of office, compensation, and reimbursement of travel expenses of members, was repealed by Pub. L. 98-369, div. B, title III, § 2349(a), July 18, 1984, 93 Stat. 1097, eff. July 18, 1984.

AMENDMENTS

1986—Subsec. (b)(2), (3). Pub. L. 99-509 struck out "legally responsible" after "individual (or a".

Subsec. (e)(3). Pub. L. 99-514 struck out "and has, under the agreement, obligated itself to comply with the requirements of this section" after "section 1395cc of this title".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1935, Pub. L. 99-272, see section 1895(e) of Pub. L.

[1] So in original. Probably should be "to".

99-514, set out as a note under section 162 of Title 26, Internal Revenue Code.

EFFECTIVE DATE

Section 9121(c) of Pub. L. 99-272 provided that: "The amendments made by this section [enacting this section and amending section 1395cc of this title] shall take effect on the first day of the first month that begins at least 90 days after the date of the enactment of this Act [Apr. 7, 1986]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1395cc of this title.

§ 1395ff. Determinations of Secretary

(a) Entitlement to and amount of benefits

The determination of whether an individual is entitled to benefits under part A or part B of this subchapter, and the determination of the amount of benefits under part A or part B of this subchapter, and any other determination with respect to a claim for benefits under part A of this subchapter shall be made by the Secretary in accordance with regulations prescribed by him.

(b) Appeal by individuals; provider representation of beneficiaries

(1) Any individual dissatisfied with any determination under subsection (a) of this section as to—

(A) whether he meets the conditions of section 426 or section 426a of this title, or

(B) whether he is eligible to enroll and has enrolled pursuant to the provisions of part B of this subchapter or section 1395i-2 of this title,

(C) the amount of benefits under part A or part B of this subchapter (including a determination where such amount is determined to be zero), or

(D) any other denial (other than under part B of subchapter XI of this chapter) of a claim for benefits under part A of this subchapter or a claim for benefits with respect to home health services under part B of this subchapter,

shall be entitled to a hearing thereon 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. Sections 406(a), 1302, and 1395hh of this title shall not be construed as authorizing the Secretary to prohibit an individual from being represented under this subsection by a person that furnishes or supplies the individual, directly or indirectly, with services or items solely on the basis that the person furnishes or supplies the individual with such a service or item. Any person that furnishes services or items to an individual may not represent an individual under this subsection with respect to the issue described in section 1395pp(a)(2) of this title unless the person has waived any rights for payment from the beneficiary with respect to the services or items involved in the appeal. If a person furnishes services or items to an individual and represents the individual under this subsection, the person may not impose any financial liability on such individual in connection with such representation.

(2) Notwithstanding paragraph (1)(C), in the case of a claim arising—

(A) under part A of this subchapter, a hearing shall not be available to an individual under paragraph (1)(C) if the amount in controversy is less than $100 and judicial review shall not be available to the individual under that paragraph if the amount in controversy is less than $1,000; or

(B) under part B of this subchapter, a hearing shall not be available to an individual under paragraph (I)(C) if the amount in controversy is less than $500 and judicial review shall not be available to the individual under that paragraph if the aggregate amount in controversy is less than $1,000.

In determining the amount in controversy, the Secretary, under regulations, shall allow two or more claims to be aggregated if the claims involve the delivery of similar or related services to the same individual or involve common issues of law and fact arising from services furnished to two or more individuals.

(3) Review of any national coverage determination under section 1395y(a)(1) of this title respecting whether or not a particular type or class of items or services is covered under this subchapter shall be subject to the following limitations:

(A) Such a determination shall not be reviewed by any administrative law judge.

(B) Such a determination shall not be held unlawful or set aside on the ground that a requirement of chapter 5 of title 5 or section 1395hh(b) of this title, relating to publication in the Federal Register or opportunity for public comment, was not satisfied.

(C) In any case in which a court determines that the record is incomplete or otherwise lacks adequate information to support the validity of the determination, it shall remand the matter to the Secretary for additional proceedings to supplement the record and the court may not determine that an item or service is covered except upon review of the supplemented record.

(4) A regulation or instruction which relates to a method for determining the amount of payment under part B of this subchapter and which was initially issued before January 1, 1981, shall not be subject to judicial review.

[*See main edition for text of* (c)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2354(b)(35), 98 Stat. 1102; Oct. 21, 1986, Pub. L. 99-509, title IX, §§ 9313(a)(1), (b)(1), 9341(a)(1), 100 Stat. 2002, 2037.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsecs. (a) and (b), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Part B of subchapter XI of this chapter, referred to in subsec. (b)(1)(D), is classified to section 1320c et seq. of this title.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-509, § 9341(a)(1)(A), inserted "or part B" after "amount of benefits under part A".

Pub. L. 99-509, § 9313(b)(1)(A), inserted "and any other determination with respect to a claim for benefits under part A of this subchapter" before "shall".

Subsec. (b)(1). Pub. L. 99-509, § 9313(a)(1), in concluding provisions, inserted at end "Sections 406(a), 1302, and 1395hh of this title shall not be construed as authorizing the Secretary to prohibit an individual from being represented under this subsection by a person that furnishes or supplies the individual, directly or indirectly, with services or items solely on the basis that the person furnishes or supplies the individual with such a service or item. Any person that furnishes services or items to an individual may not represent an individual under this subsection with respect to the issue described in section 1395pp(a)(2) of this title unless the person has waived any rights for payment from the beneficiary with respect to the services or items involved in the appeal. If a person furnishes services or items to an individual and represents the individual under this subsection, the person may not impose any financial liability on such individual in connection with such representation."

Subsec. (b)(1)(C). Pub. L. 99-509, § 9341(a)(1)(B), inserted "or part B".

Subsec. (b)(1)(D). Pub. L. 99-509, § 9313(b)(1)(B), added subpar. (D).

Subsec. (b)(2). Pub. L. 99-509, § 9341(a)(1)(C), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Notwithstanding the provisions of subparagraph (C) of paragraph (1) of this subsection, a hearing shall not be available to an individual by reason of such subparagraph (C) if the amount in controversy is less than $100; nor shall judicial review be available to an individual hy reason of such subparagraph (C) if the amount in controversy is less than $1,000."

Subsec. (b)(3), (4). Pub. L. 99-509, § 9341(a)(1)(D), added pars. (3) and (4).

1984—Subsec. (b)(1)(B). Pub. L. 98-369 struck out the comma before "or section 1395i-2" and struck out ", or section 1819" after "section 1395i-2 of this title".

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9313(b)(2) of Pub. L. 99-509 provided that: "The amendments made by this subsection [amending this section] take effect on the date of the enactment of this Act [Oct. 21, 1986]."

Section 9341(b) of Pub. L. 99-509 provided that: "The amendments made by subsection (a) [amending sections 1395u, 1395ff, and 1395pp of this title] shall apply to items and services furnished on or after January 1, 1987."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1964, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395x, 1395pp of this title; title 45 section 231f.

§ 1395gg. Payment on behalf of individuals

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395l, 1395*l*, 1395t, 1395u of this title; title 2 section 906.

§ 1395hb. Regulations

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

(b)(1) Except as provided in paragraph (2), before issuing in final form any regulation under subsection (a) of this section, the Secretary shall provide for notice of the proposed regulation in the Federal Register and a period of not less than 60 days for public comment thereon.

(2) Paragraph (1) shall not apply where—

(A) a statute specifically permits a regulation to be issued in interim final form or otherwise with a shorter period for public comment,

(B) a statute establishes a specific deadline for the implementation of a provision and the deadline is less than 150 days after the date of the enactment of the statute in which the deadline is contained, or

(C) subsection (b) of section 553 of title 5 does not apply pursuant to subparagraph (B) of such subsection.

(As amended Oct. 21, 1986, Pub. L. 99-509, title IX, § 9321(e)(1), 100 Stat. 2017.)

AMENDMENTS

1986—Pub. L. 99-509 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9321(e)(3)(A) of Pub. L. 99-509 provided that: "The amendments made by paragraph (1) [amending this section] shall apply to notices of proposed rulemaking issued after the date of the enactment of this Act [Oct. 21, 1986]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred te in section 1395ff of this title.

§ 1395ii. Application of certain provisions of subchapter II

The provisions of sections 406 and 416(j) of this title, and of subsections (a), (d), (e), (h), (i), (j), (k), and (*l*) of section 405 of this title, shall also apply with respect to this subchapter to the same extent as they are applicable with respect to subchapter II of this chapter.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2354(b)(36), 98 Stat. 1102.)

AMENDMENTS

1984—Pub. L. 98-369 struck out the comma after "406" and struck out reference to subsec. (f) of section 405 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

§ 1395*ll*. Studies and recommendations

[*See main edition for text of* (a)]

(b) Operation and administration of insurance programs

The Secretary shall make a continuing study of the operation and administration of the insurance programs under parts A and B of this subchapter (including a validation of the accreditation process of the Joint Commission on Accreditation of Hospitals, the operation and administration of health maintenance organizations authorized by section 1395mm of this title, the experiments and demonstration projects authorized by section 1395b-1 of this title and the experiments and demonstration projects authorized by section 222(a) of the Social Security Amendments of 1972), and shall transmit to the Congress annually a report concerning the operation of such programs.

(c) Patient outcome assessment research program

(1) The Secretary shall establish a patient outcome assessment research program (in this subsection referred to as the "research program") to promote research with respect to patient outcomes of selected medical treatments and surgical procedures for the purpose of assessing their appropriateness, necessity, and effectiveness. The research program shall include—

(A) reorganization of data relating to claims under parts A and B of this subchapter in a manner that facilitates research with respect to patient outcomes,

(B) assessments of the appropriateness of admissions and discharges,

(C) assessments of the extent of professional uncertainty regarding efficacy,

(D) development of improved methods for measuring patient outcomes,

(E) evaluations of patient outcomes, and

(F) evaluation of the effects on physicians' practice patterns of the dissemination to physicians and peer review organizations with contracts under part B of subchapter XI of this chapter of the findings of the research conducted under subparagraphs (B), (C), (D), and (E).

(2) In selecting treatments and procedures to be studied, the Secretary shall give priority to those medical and surgical treatments and procedures—

(A) for which data indicate a highly (or potentially highly) variable pattern of utilization among beneficiaries under this subchapter in different geographic areas, and

(B) which are significant (or potentially significant) for purposes of this subchapter in terms of utilization by beneficiaries, length of hospitalization associated with the treatment or procedure, costs to the research program, and risk involved to the beneficiary.

(3) For purposes of carrying out the research program, there are authorized to be appropriated—

(A) from the Federal Hospital Insurance Trust Fund $4,000,000 for fiscal year 1987 and $5,000,000 for each of fiscal years 1988 and 1989, and

(B) from the Federal Supplementary Medical Insurance Trust Fund $2,000,000 for fiscal years [1] 1987 and $2,500,000 for each of fiscal years 1988 and 1989.

(4) Not less than 90 percent of the amount appropriated for any fiscal year to carry out the research program shall be used to fund grants to, and cooperative agreements with, non-Federal entities to conduct research described in paragraph (1). The remainder may be used by the Secretary to provide such research by Federal entities and for administrative costs.

(5) The research program shall be administered by the National Center for Health Services Research and Health Care Technology established under section 242c of this title (in this subsection referred to as the "Center"). The Center shall establish application procedures for grants and cooperative agreements, and shall establish peer review panels to review all such applications and all research findings. The Center shall consult with the council on health care technology (established under a grant under section 242n of this title) in establishing the scope and priorities for the research program and shall report periodically to any such council on the status of the program.

(6) The Secretary shall make available data derived from the programs under this subchapter and other programs administered by the Secretary for use in the research program.

(7) The Center shall report to the Committees on Finance and Appropriations of the Senate and the Committees on Ways and Means, Energy and Commerce, and Appropriations of the House of Representatives not later than 18 months after October 21, 1986, and annually thereafter, with respect to the findings under the research program. In cooperation with appropriate medical specialty groups, the Center shall disseminate such findings as widely as possible, including disseminating such findings to each peer review organization which has a contract under part B of subchapter XI of this chapter.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2354(b)(17), 98 Stat. 1101; Oct. 21, 1986, Pub. L. 99-509, title IX, § 9316(a), 100 Stat. 2006.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in text, are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Part B of subchapter XI of this chapter, referred to in subsec. (c)(1)(F), (7), is classified to section 1320c et seq. of this title.

CODIFICATION

October 21, 1986, referred to in subsec. (c)(7), was in the original "the date of the enactment of this Act", which was translated as meaning the date of enactment of Pub. L. 99-509, which enacted subsec. (c) of this section, to reflect the probable intent of Congress.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99-509 added subsec. (c).

1984—Subsec. (b). Pub. L. 98-369 struck out "the" after "Joint Commission on".

[1] So in original. Probably should be "year".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a noto under section 1320a-1 of this title.

STUDY TO DEVELOP A STRATEGY FOR QUALITY REVIEW AND ASSURANCE

Section 9313(d) of Pub. L. 99-509 provided that:

"(1) IN GENERAL.—The Secretary of Health and Human Services shall arrange for a study to design a strategy for reviewing and assuring the quality of care for which payment may be made under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.].

"(2) ITEMS INCLUDED IN STUDY.—Among other items, the study shall—

"(A) identify the appropriate considerations which should be used in defining 'quality of care';

"(B) evaluate the relative roles of structure, process, and outcome standards in assuring quality of care;

"(C) develop prototype criteria and standards for defining and measuring quality of care;

"(D) evaluate the adequacy and focus of the current methods for measuring, reviewing, and assuring quality of care;

"(E) evaluate the current research on methodologies for measuring quality of care, and suggest areas of research needed for further progress;

"(F) evaluate the adequacy and range of methods available to correct or prevent identified problems with quality of care;

"(G) review mechanisms available for promoting, coordinating, and supervising at the national level quality review and assurance activities; and

"(H) develop general criteria which may be used in establishing priorities in the allocation of funds and personnel in reviewing and assuring quality of care.

"(3) REPORT.—The Secretary shall submit to Congress, not later than 2 years after the date of the enactment of this Act [Oct. 21, 1986], a report on the study. Such report shall address the items described in paragraph (2) and shall include recommendations with respect to strengthening quality assurance and review activities for services furnished under the medicare program.

"(4) ARRANGEMENTS FOR STUDY.—(A) The Secretary shall request the National Academy of Sciences, acting through appropriate units, to submit an application to conduct the study described in this subsection. If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.

"(B) In developing plans for the conduct of the study, the Secretary shall assure that consumer and provider groups, peer review organizations, the Joint Commission on Accreditation of Hospitals, professional societies, and private purchasers of care with experience and expertise in the monitoring of the quality of care are consulted.

"(5) COORDINATION.—The Secretary shall designate an office with responsibilities for coordinating studies, under this subsection and other authority, relating to the quality of services furnished to medicare and medicaid beneficiaries, in particular studies relating to the evaluation of the prospective payment system on the quality of health care provided to medicare beneficiaries. These responsibilities shall include assessing the feasibility and costs of alternative studies in relation to their importance, overseeing and coordinating access to needed data, and maintaining a clearinghouse for both public and private sector studies."

SPECIAL TREATMENT OF STATES FORMERLY UNDER WAIVER

For treatment of hospitals in States which have had a waiver approved under this section, upon termination of waiver, see section 9202(j) of Pub. L. 99-272, as amended, set out as a note under section 1395ww of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1395y of this title; title 45 section 231f.

§ 1395mm. Payments to health maintenance organizations and competitive medical plans

(a) Rates and adjustments

(1)(A) The Secretary shall annually determine, and shall announce (in a manner intended to provide notice to interested parties) not later than September 7 before the calendar year concerned—

(i) a per capita rate of payment for each class of individuals who are enrolled under this section with an eligible organization which has entered into a risk-sharing contract and who are entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, and

(ii) a per capita rate of payment for each class of individuals who are so enrolled with such an organization and who are enrolled under part B of this subchapter only.

For purposes of this section, the term "risk-sharing contract" means a contract entered into under subsection (g) of this section and the term "reasonable cost reimbursement contract" means a contract entered into under subsection (h) of this section.

(B) The Secretary shall define appropriate classes of members, based on age, disability status, and such other factors as the Secretary determines to be appropriate, so as to ensure actuarial equivalence. The Secretary may add to, modify, or substitute for such classes, if such changes will improve the determination of actuarial equivalence.

(C) The annual per capita rate of payment for each such class shall be equal to 95 percent of the adjusted average per capita cost (as defined in paragraph (4)) for that class.

(D) In the case of an eligible organization with a risk-sharing contract, the Secretary shall make monthly payments in advance and in accordance with the rate determined under subparagraph (C) and except as provided in subsection (g)(2) of this section, to the organization for each individual enrolled with the organization under this section.

(E) The amount of payment under this paragraph may be retroactively adjusted to take into account any difference between the actual number of individuals enrolled in the plan under this section and the number of such individuals estimated to be so enrolled in determining the amount of the advance payment.

(2) With respect to any eligible organization which has entered into a reasonable cost reimbursement contract, payments shall be made to

such plan in accordance with subsection (h)(2) of this section rather than paragraph (1).

(3) Subject to subsection (c)(7) of this section, payments under a contract to an eligible organization under paragraph (1) or (2) shall be instead of the amounts which (in the absence of the contract) would be otherwise payable, pursuant to sections 1395f(b) and 1395l(a) of this title, for services furnished by or through the organization to individuals enrolled with the organization under this section.

(4) For purposes of this section, the term "adjusted average per capita cost" means the average per capita amount that the Secretary estimates in advance (on the basis of actual experience, or retrospective actuarial equivalent based upon an adequate sample and other information and data, in a geographic area served by an eligible organization or in a similar area, with appropriate adjustments to assure actuarial equivalence) would be payable in any contract year for services covered under parts A and B of this subchapter, or part B only, and types of expenses otherwise reimbursable under parts A and B of this subchapter, or part B only (including administrative costs incurred by organizations described in sections 1395h and 1395u of this title), if the services were to be furnished by other than an eligible organization or, in the case of services covered only under section 1395x(s)(2)(H) of this title, if the services were to be furnished by a physician or as an incident to a physician's service.

(5) The payment to an eligible organization under this section for individuals enrolled under this section with the organization and entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter shall be made from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund. The portion of that payment to the organization for a month to be paid by the latter trust fund shall be equal to 200 percent of the sum of—

(A) the product of (i) the number of such individuals for the month who have attained age 65, and (ii) the monthly actuarial rate for supplementary medical insurance for the month as determined under section 1395r(a)(1) of this title, and

(B) the product of (i) the number of such individuals for the month who have not attained age 65, and (ii) the monthly actuarial rate for supplementary medical insurance for the month as determined under section 1395r(a)(4) of this title.

The remainder of that payment shall be paid by the former trust fund.

(6) Subject to subsection (c)(7) of this section, if an individual is enrolled under this section with an eligible organization having a risk-sharing contract, only the eligible organization shall be entitled to receive payments from the Secretary under this subchapter for services furnished to the individual.

(b) Definitions; requirements

For purposes of this section, the term "eligible organization" means a public or private entity (which may be a health maintenance organization or a competitive medical plan), organized under the laws of any State, which—

(1) is a qualified health maintenance organization (as defined in section 300e-9(d) of this title), or

(2) meets the following requirements:

(A) The entity provides to enrolled members at least the following health care services:

(i) Physicians' services performed by physicians (as defined in section 1395x(r)(1) of this title).

(ii) Inpatient hospital services.

(iii) Laboratory, X-ray, emergency, and preventive services.

(iv) Out-of-area coverage.

(B) The entity is compensated (except for deductibles, coinsurance, and copayments) for the provision of health care services to enrolled members by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health care service actually provided to a member.

(C) The entity provides physicians' services primarily (i) directly through physicians who are either employees or partners of such organization, or (ii) through contracts with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(D) The entity assumes full financial risk on a prospective basis for the provision of the health care services listed in subparagraph (A), except that such entity may—

(i) obtain insurance or make other arrangements for the cost of providing to any enrolled member health care services listed in subparagraph (A) the aggregate value of which exceeds $5,000 in any year,

(ii) obtain insurance or make other arrangements for the cost of health care service listed in subparagraph (A) provided to its enrolled members other than through the entity because medical necessity required their provision before they could be secured through the entity,

(iii) obtain insurance or make other arrangements for not more than 90 percent of the amount by which its costs for any of its fiscal years exceed 115 percent of its income for such fiscal year, and

(iv) make arrangements with physicians or other health professionals, health care institutions, or any combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for the provision of basic health services by the physicians or other health professionals or through the institutions.

(E) The entity has made adequate provision against the risk of insolvency, which provision is satisfactory to the Secretary.

Paragraph (2)(A)(ii) shall not apply to an entity which had contracted with a single State agency administering a State plan approved under subchapter XIX of this chapter for the provision of services (other than inpatient hospital services) to individuals eligible for such

services under such State plan on a prepaid risk basis prior to 1970.

(c) Enrollment in plan; duties of organization to enrollees

(1) The Secretary may not enter into a contract under this section with an eligible organization unless it meets the requirements of this subsection and subsection (e) of this section with respect to members enrolled under this section.

(2) The organization must provide to members enrolled under this section, through providers and other persons that meet the applicable requirements of this subchapter and part A of subchapter XI of this chapter—

(A) only those services covered under parts A and B of this subchapter, for those members entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, or

(B) only those services covered under part B of this subchapter, for those members enrolled only under such part,

which are available to individuals residing in the geographic area served by the organization, except that (i) the organization may provide such members with such additional health care services as the members may elect, at their option, to have covered, and (ii) in the case of an organization with a risk-sharing contract, the organization may provide such members with such additional health care services as the Secretary may approve. The Secretary shall approve any such additional health care services which the organization proposes to offer to such members, unless the Secretary determines that including such additional services will substantially discourage enrollment by covered individuals with the organization.

(3)(A)(i) Each eligible organization must have an open enrollment period, for the enrollment of individuals under this section, of at least 30 days duration every year and including the 30-day period specified under clause (ii), and must provide that at any time during which enrollments are accepted, the organization will accept up to the limits of its capacity (as determined by the Secretary) and without restrictions, except as may be authorized in regulations, individuals who are eligible to enroll under subsection (d) of this section in the order in which they apply for enrollment, unless to do so would result in failure to meet the requirements of subsection (f) of this section or would result in the enrollment of enrollees substantially nonrepresentative, as determined in accordance with regulations of the Secretary, of the population in the geographic area served by the organization.

(ii) For each area served by more than one eligible organization under this section, the Secretary (after consultation with such organizations) shall establish a single 30-day period each year during which all eligible organizations serving the area must provide for open enrollment under this section. The Secretary shall determine annual per capita rates under subsection (a)(1)(A) of this section in a manner that assures that individuals enrolling during such a 30-day period will not have premium charges increased or any additional benefits decreased for 12 months beginning on the date the individual's enrollment becomes effective. An eligible organization may provide for such other open enrollment period or periods as it deems appropriate consistent with this section.

(B) An individual may enroll under this section with an eligible organization in such manner as may be prescribed in regulations and may terminate his enrollment with the eligible organization as of the beginning of the first calendar month following the date on which the request is made for such termination (or, in the case of financial insolvency of the organization, as may be prescribed by regulations) or, in the case of such an organization with a reasonable cost reimbursement contract, as may be prescribed by regulations. In the case of an individual's termination of enrollment, the organization shall provide the individual with a copy of the written request for termination of enrollment and a written explanation of the period (ending on the effective date of the termination) during which the individual continues to be enrolled with the organization and may not receive benefits under this subchapter other than through the organization.

(C) The Secretary may prescribe the procedures and conditions under which an eligible organization that has entered into a contract with the Secretary nnder this subsection may inform individuals eligible to enroll under this section with the organization about the organization, or may enroll such individuals with the organization. No brochures, application forms, or other promotional or informational material may be distributed by an organization to (or for the use of) individuals eligible to enroll with the organization under this section unless (i) at least 45 days before its distribution, the organization has submitted the material to the Secretary for review and (ii) the Secretary has not disapproved the distribution of the material. The Secretary shall review all such material submitted and shall disapprove such material if the Secretary determines, in the Secretary's discretion, that the material is materially inaccurate or misleading or otherwise makes a material misrepresentation.

(D) The organization must provide assurances to the Secretary that it will not expel or refuse to re-enroll any such individual because of the individual's health status or requirements for health care services, and that it will notify each such individual of such fact at the time of the individual's enrollment.

(E) Each eligible organization shall provide each enrollee, at the time of enrollment and not less frequently than annually thereafter, an explanation of the enrollee's rights under this section, including an explanation of—

(i) the enrollee's rights to benefits from the organization,

(ii) the restrictions on payments under this subchapter for services furnished other than by or through the organization,

(iii) out-of-area coverage provided by the organization,

(iv) the organization's coverage of emergency services and urgently needed care, and

(v) appeal rights of enrollees.

(4) The organization must—

(A) make the services described in paragraph (2) (and such other health care services as such individuals have contracted for) (i) available and accessible to each such individual, within the area served by the organization, with reasonable promptness and in a manner which assures continuity, and (ii) when medically necessary, available and accessible twenty-four hours a day and seven days a week, and

(B) provide for reimbursement with respect to services which are described in subparagraph (A) and which are provided to such an individual other than through the organization, if (i) the services were medically necessary and immediately required because of an unforeseen illness, injury, or condition and (ii) it was not reasonable given the circumstances to obtain the services through the organization.

(5)(A) The organization must provide meaningful procedures for hearing and resolving grievances between the organization (including any entity or individual through which the organization provides health care services) and members enrolled with the organization under this section.

(B) A member enrolled with an eligible organization under this section who is dissatisfied by reason of his failure to receive any health service to which he believes he is entitled and at no greater charge than he believes he is required to pay is entitled, if the amount in controversy is $100 or more, to a hearing before the Secretary to the same extent as is provided in section 405(b) of this title, and in any such hearing the Secretary shall make the eligible organization a party. If the amount in controversy is $1,000 or more, the individual or eligible organization shall, upon notifying the other party, be entitled to judicial review of the Secretary's final decision as provided in section 405(g) of this title, and both the individual and the eligible organization shall be entitled to be parties to that judicial review.

(6) The organization must have arrangements, established in accordance with regulations of the Secretary, for an ongoing quality assurance program for health care services it provides to such individuals, which program (A) stresses health outcomes and (B) provides review by physicians and other health care professionals of the process followed in the provision of such health care services.

(7) A risk-sharing contract under this section shall provide that in the case of an individual who is receiving inpatient hospital services from a subsection (d) hospital (as defined in section 1395ww(d)(1)(B) of this title) as of the effective date of the individual's—

(A) enrollment with an eligible organization under this section—

(i) payment for such services until the date of the individual's discharge shall be made under this subchapter as if the individual were not enrolled with the organization,

(ii) the organization shall not be financially responsible for payment for such services until the date after the date of the individual's discharge, and

(iii) the organization shall nonetheless he paid the full amount otherwise payable to the organization under this section; or

(B) termination of enrollment with an eligible organization under this section—

(i) the organization shall be financially responsible for payment for such services after such date and until the date of the individual's discharge,

(ii) payment for such services during the stay shall not be made under section 1395ww(d) of this title, and

(iii) the organization shall not receive any payment with respect to the individual under this section during the period the individual is not enrolled.

(d) Right to enroll with contracting organization in geographic area

Subject to the provisions of subsection (c)(3) of this section, every individual entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter or enrolled under part B of this subchapter only (other than an individual medically determined to have end-stage renal disease) shall be eligible to enroll under this section with any eligible organization with which the Secretary has entered into a contract under this section and which serves the geographic area in which the individual resides.

(e) Limitation on charges; election of coverage; "adjusted community rate" defined; workmen's compensation and insurance benefits

(1) In no case may—

(A) the portion of an eligible organization's premium rate and the actuarial value of its deductibles, coinsurance, and copayments charged (with respect to services covered under parts A and B of this subchapter) to individuals who are enrolled under this section with the organization and who are entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, or

(B) the portion of its premium rate and the actuarial value of its deductibles, coinsurance, and copayments charged (with respect to services covered under part B of this subchapter) to individuals who are enrolled under this section with the organization and enrolled under part B of this subchapter only

exceed the actuarial value of the coinsurance and deductibles that would be applicable on the average to individuals enrolled under this section with the organization (or, if the Secretary finds that adequate data are not available to determine that actuarial value, the actuarial value of the coinsurance and deductibles applicable on the average to individuals in the area, in the State, or in the United States, eligible to enroll under this section with the organization, or other appropriate data) and entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, or enrolled under part B only, respectively, if they were not members of an eligible organization.

(2) If the eligible organization provides to its members enrolled under this section services in addition to services covered under parts A and B of this subchapter, election of coverage for such additional services (unless such services have been approved by the Secretary under subsection (c)(2) of this section) shall be optional for such members and such organization shall furnish such members with information on the portion of its premium rate or other charges applicable to such additional services. In no case may the sum of—

(A) the portion of such organization's premium rate charged, with respect to such additional services, to members enrolled under this section, and

(B) the actuarial value of its deduetibles, coinsurance, and copayments charged, with respect to such services to such members

exceed the adjusted community rate for such services.

(3) For purposes of this section, the term "adjusted community rate" for a service or services means, at the election of an eligible organization, either—

(A) the rate of payment for that service or services which the Secretary annually determines would apply to a member enrolled under this section with an eligible organization if the rate of payment were determined under a "community rating system" (as defined in section 300e-1(8) of this title, other than subparagraph (C)), or

(B) such portion of the weighted aggregate premium, which the Secretary annually estimates would apply to a member enrolled under this section with the eligible organization, as the Secretary annually estimates is attributable to that service or services,

but adjusted for differences between the utilization characteristics of the members enrolled with the eligible organization under this section and the utilization characteristics of the other members of the organization (or, if the Secretary finds that adequate data are not available to adjust for those differences, the differences between the utilization characteristics of members in other eligible organizations, or individuals in the area, in the State, or in the United States, eligible to enroll under this section with an eligible organization and the utilization characteristics of the rest of the population in the area, in the State, or in the United States, respectively).

(4) Notwithstanding any other provision of law, the eligible organization may (in the case of the provision of services to a member enrolled under this section for an illness or injury for which the member is entitled to benefits under a workmen's compensation law or plan of the United States or a State, under an automobile or liability insurance policy or plan, including a self-insured plan, or under no fault insurance) charge or authorize the provider of such services to charge, in accordance with the charges allowed under such law or policy—

(A) the insurance carrier, employer, or other entity which under such law, plan, or policy is to pay for the provision of such services, or

(B) such member to the extent that the member has been paid under such law, plan, or policy for such services.

(f) Membership requirements

(1) Each eligible organization with which the Secretary enters into a contract under this section shall have, for the duration of such contract, an enrolled membership at least one-half of which consists of individuals who are not entitled to benefits under this subchapter or under a State plan approved under subchapter XIX of this chapter.

(2) The Secretary may modify or waive the requirement imposed by paragraph (1) only—

(A) to the extent that more than 50 percent of the population of the area served by the organization consists of individuals who are entitled to benefits under this subchapter or under a State plan approved under subchapter XIX of this chapter, or

(B) in the case of an eligible organization that is owned and operated by a governmental entity, only with respect to a period of three years beginning on the date the organization first enters into a contract under this section, and only if the organization has taken and is making reasonable efforts to enroll individuals who are not entitled to benefits under this subchapter or under a State plan approved under subchapter XIX of this chapter.

(3) If the Secretary determines that an eligible organization has failed to comply with the requirements of this subsection, the Secretary may provide for the suspension of enrollment of individuals under this section or of payment to the organization under this section for individuals newly enrolled with the organization, after the date the Secretary notifies the organization of such noncompliance.

(g) Risk-sharing contract

(1) The Secretary may enter a risk-sharing contract with any eligible organization, as defined in subsection (b) of this section, which has at least 5,000 members, except that the Secretary may enter into such a contract with an eligible organization that has fewer members if the organization primarily serves members residing outside of urbanized areas.

(2) Each risk-sharing contract shall provide that—

(A) if the adjusted community rate, as defined in subsection (e)(3) of this section, for services under parts A and B of this subchapter (as reduced for the actuarial value of the coinsurance and deductibles under those parts) for members enrolled under this section with the organization and entitled to benefits under part A of this subchapter and enrolled in part B of this subchapter, or

(B) if the adjusted community rate for services under part B of this subchapter (as reduced for the actuarial value of the coinsurance and deductibles under that part) for members enrolled under this section with the organization and entitled to benefits under part B of this subchapter only

is less than the average of the per capita rates of payment to be made under subsection (a)(1) of this section at the beginning of an annual contract period for members enrolled under this section with the organization and entitled to benefits under part A of this subchapter and enrolled in part B of this subchapter, or enrolled in part B of this subchapter only, respectively, the eligible organization shall provide to members enrolled under a risk-sharing contract under this section with the organization and entitled to benefits under part A of this subchapter and enrolled in part B of this subchapter, or enrolled in part B of this subchapter only, respectively, the additional benefits described in paragraph (3) which are selected by the eligible organization and which the Secretary finds are at least equal in value te the difference between that average per capita payment and the adjusted community rate (as so reduced); except that this paragraph shall not apply with respect to any organization which elects to receive a lesser payment to the extent that there is no longer a difference between the average per capita payment and adjusted community rate (as so reduced) and except that an organization (with the approval of the Secretary) may provide that a part of the value of such additional benefits be withheld and reserved by the Secretary as provided in paragraph (5). If the Secretary finds that there is insufficient enrollment experience to determine an average of the per capita rates of payment to be made under subsection (a)(1) of this section at the beginning of a contract period, the Secretary may determine such an average based on the enrollment experience of other contracts entered into under this section.

(3) The additional benefits referred to in paragraph (2) are—

(A) the reduction of the premium rate or other charges made with respect te services furnished by the organization to members enrolled under this section, or

(B) the provision of additional health benefits,

or both.

(4) A risk-sharing contract under this subsection may, at the option of an eligible organization, provide that the Secretary—

(A) will reimburse hospitals and skilled nursing facilities either for payment amounts determined in accordance with section 1395ww of this title, or, if applicable, for the reasonable cost (as determined under section 1395x(v) of this title) or other appropriate basis for payment established under this subchapter, of inpatient services furnished to individuals enrolled with such organization pursuant to subsection (d) of this section, and

(B) will deduct the amount of such reimbursement for payment which would otherwise be made to such organization.

(5) An organization having a risk-sharing contract under this section may (with the approval of the Secretary and during a period of not longer than four years) provide that a part of the value of additional benefits otherwise required to be provided by reason of paragraph (2) be withheld and reserved in the Federal Hospital Insurance Trust Fund and in the Federal Supplementary Medical Insurance Trust Fund (in such proportions as the Secretary determines to be appropriate) by the Secretary for subsequent annual contract periods, to the extent required to stabilize and prevent undue fluctuations in the additional benefits offered in those subsequent periods by the organization in accordance with paragraph (3). Any of such value of additional benefits which is not provided to members of the organization in accordance with paragraph (3) prior to the end of such period, shall revert for the use of such trust funds.

(6)(A) A risk-sharing contract under this section shall require the eligible organization to provide prompt payment (consistent with the provisions of sections 1395h(c)(2) and 1395u(c)(2) of this title) of claims submitted for services and supplies furnished to individuals pursuant to such contract, if the services or supplies are not furnished under a contract between the organization and the provider or supplier.

(B) In the case of an eligible organization which the Secretary determines, after notice and opportunity for a hearing, has failed to make payments of amounts in compliance with subparagraph (A), the Secretary may provide for direct payment of the amounts owed to providers and suppliers for such covered services furnished to individuals enrolled under this section under the contract. If the Secretary provides for such direct payments, the Secretary shall provide for an appropriate reduction in the amount of payments otherwise made to the organization under this section to reflect the amount of the Secretary's payments (and costs incurred by the Secretary in making such payments).

(b) Reasonable cost reimbursement contract; requirements

(1) If—

(A) the Secretary is not satisfied that an eligible organization has the capacity to bear the risk of potential losses under a risk-sharing contract under this section, or

(B) the eligible organization so elects or has an insufficient number of members to be eligible to enter into a risk-sharing contract under subsection (g)(1) of this section,

the Secretary may, if he is otherwise satisfied that the eligible organization is able to perform its contractual obligations effectively and efficiently, enter into a contract with such organization pursuant to which such organization is reimbursed on the basis of its reasonable cost (as defined in section 1395x(v) of this title) in the manner prescribed in paragraph (3).

(2) A reasonable cost reimbursement contract under this subsection may, at the option of such organization, provide that the Secretary—

(A) will reimburse hospitals and skilled nursing facilities either for the reasonable cost (as determined under section 1395x(v) of this title) or for payment amounts determined in accordance with section 1395ww of this title, as applicable, of services furnished

to individuals enrolled with such organization pursuant to subsection (d) of this section, and

(B) will deduct the amount of such reimbursement from payment which would otherwise be made to such organization.

If such an eligible organization pays a hospital or skilled nursing facility directly, the amount paid shall not exceed the reasonable cost of the services (as determined under section 1395x(v) of this title) or the amount determined under section 1395ww of this title, as applicable, unless such organization demonstrates to the satisfaction of the Secretary that such excess payments are justified on the basis of advantages gained by the organization.

(3) Payments made to an organization with a reasonable cost reimbursement contract shall be subject to appropriate retroactive corrective adjustment at the end of each contract year so as to assure that such organization is paid for the reasonable cost actually incurred (excluding any part of incurred cost found to be unnecessary in the efficient delivery of health services) or the amounts otherwise determined under section 1395ww of this title for the types of expenses otherwise reimbursable under this subchapter for providing services covered under this subchapter to individuals described in subsection (a)(1) of this section.

(4) Any reasonable cost reimbursement contract with an eligible organization under this subsection shall provide that the Secretary shall require, at such time following the expiration of each accounting period of the eligible organization (and in such form and in such detail) as he may prescribe—

(A) that the organization report to him in an independently certified financial statement its per capita incurred cost based on the types of components of expenses otherwise reimbursable under this subchapter for providing services described in subsection (a)(1) of this section, including therein, in accordance with accounting procedures prescribed by the Secretary, its methods of allocating costs between individuals enrolled under this section and other individuals enrolled with such organization;

(B) that failure to report such information as may be required may be deemed to constitute evidence of likely overpayment on the basis of which appropriate collection action may be taken;

(C) that in any case in which an eligible organization is related to another organization by common ownership or control, a consolidated financial statement shall be filed and that the allowable costs for such organization may not include costs for the types of expense otherwise reimbursable under this subchapter, in excess of those which would be determined to be reasonable in accordance with regulations (providing for limiting reimbursement to costs rather than charges to the eligible organization by related organizations and owners) issued by the Secretary; and

(D) that in any case in which compensation is paid by an eligible organization substantially in excess of what is normally paid for similar services by similar practitioners (regardless of method of compensation), such compensation may as appropriate be considered to constitute a distribution of profits.

(i) Duration, termination, effective date, and terms of contract; powers and duties of Secretary

(1) Each contract under this section shall be for a term of at least one year, as determined by the Secretary, and may be made automatically renewable from term to term in the absence of notice by either party of intention to terminate at the end of the current term; except that the Secretary may terminate any such contract at any time (after such reasonable notice and opportunity for hearing to the eligible organization involved as he may provide in regulations), if he finds that the organization—

(A) has failed substantially to carry out the contract,

(B) is carrying out the contract in a manner inconsistent with the efficient and effective administration of this section, or

(C) no longer substantially meets the applicable conditions of subsections (b), (c), (e), and (f) of this section.

(2) The effective date of any contract executed pursuant to this section shall be specified in the contract.

(3) Each contract under this section—

(A) shall provide that the Secretary, or any person or organization designated by him—

(i) shall have the right to inspect or otherwise evaluate (I) the quality, appropriateness, and timeliness of services performed under the contract and (II) the facilities of the organization when there is reasonable evidence of some need for such inspection, and

(ii) shall have the right to audit and inspect any books and records of the eligible organization that pertain (I) to the ability of the organization to bear the risk of potential financial losses, or (II) to services performed or determinations of amounts payable under the contract;

(B) shall require the organization with a risk-sharing contract to provide (and pay for) written notice in advance of the contract's termination, as well as a description of alternatives for obtaining benefits under this subchapter, to each individual enrolled under this section with the organization; and

(C)(i) shall require the organization to comply with subsections (a) and (c) of section 300e-17 of this title (relating to disclosure of certain financial information) and with the requirement of section 300e(c)(8) of this title (relating to liability arrangements to protect members);

(ii) shall require the organization to provide and supply information (described in section 1395cc(b)(2)(C)(ii) of this title) in the manner such information is required to be provided or supplied under that section;

(iii) shall require the organization to notify the Secretary of loans and other special financial arrangements which are made between the organization and subcontractors, affiliates, and related parties; and

(D) shall contain such other terms and conditions not inconsistent with this section (including requiring the organization to provide the Secretary with such information) as the Secretary may find necessary and appropriate.

(4) The Secretary may not enter into a risk-sharing contract with an eligible organization if a previous risk-sharing contract with that organization under this section was terminated at the request of the organization within the preceding five-year period, except in circumstances which warrant special consideration, as determined by the Secretary.

(5) The authority vested in the Secretary by this section may be performed without regard to such provisions of law or regulations relating to the making, performance, amendment, or modification of contracts of the United States as the Secretary may determine to be inconsistent with the furtherance of the purpose of this subchapter.

(6)(A) Any eligible organization with a risk-sharing contract under this section that fails substantially to provide medically necessary items and services that are required (under law or such contract) to be provided to individuals covered under such contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals, is subject to a civil money penalty of not more than $10,000 for each such failure.

(B) The provisions of section 1320a-7a of this title (other than subsection (a)) shall apply to a civil money penalty under subparagraph (A) in the same manner as they apply to a civil money penalty under that section.

(7)(A) Except as provided under section 1320c-3(a)(4)(C) of this title, each risk-sharing contract with an eligible organization under this section shall provide that the organization will maintain an agreement with a utilization and quality control peer review organization (which has a contract with the Secretary under part B of subchapter XI of this chapter for the area in which the eligible organization is located) under which the peer review organization will perform functions under section 1320c-3(a)(4)(B) of this title and section 1320c-3(a)(14) of this title (other than those performed under contracts described in section 1395cc(a)(1)(F) of this title) with respect to services, furnished by the eligible organization, for which payment may be made under this subchapter.

(B) For purposes of payment under this subchapter, the cost of such agreement to the eligible organization shall be considered a cost incurred by a provider of services in providing covered services under this subchapter and shall be paid directly by the Secretary to the peer review organization on behalf of such eligible organization in accordance with a schedule established by the Secretary.

(C) Such payments—

(i) shall be transferred in appropriate proportions from the Federal Hospital Insurance Trust Fund and from the Supplementary Medical Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and

(ii) shall not be less in the aggregate for such organizations for a fiscal year than the amounts the Secretary determines to be sufficient to cover the costs of such organizations' conducting activities described in subparagraph (A) with respect to such eligible organizations under part B of subchapter XI of this chapter.

(As amended Sept. 3, 1982, Pub. L. 97-248, title I, § 114(a), 96 Stat. 341; Jan. 12, 1983, Pub. L. 97-448, title III, § 309(b)(12), 96 Stat. 2409; Apr. 20, 1983, Pub. L. 98-21, title VI, §§ 602(g), 606(a)(3)(H), 97 Stat. 164, 171; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2350(a)(1), (b)(1), (2), (c), 2354(b)(37), (38), 98 Stat. 1097, 1098, 1102; Apr. 7, 1986, Pub. L. 99-272, title IX, § 9211(a)-(d), 100 Stat. 178, 179; Oct. 21, 1986, Pub. L. 99-509, title IX, §§ 9312(b)(1), (c)(1), (2), (d)(1), (e)(1), (f), 9353(e)(2), 100 Stat. 1999-2001, 2048; Oct. 22, 1986, Pub. L. 99-514, title XVIII, § 1895(b)(11)(A), 100 Stat. 2934.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in text, are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Parts A and B of subchapter XI of this chapter, referred to in subsecs. (c)(2) and (i)(7)(A), (B)(ii), are classified to sections 1301 et seq. and 1320c et seq., respectively, of this title.

AMENDMENTS

1986—Subsec. (a)(1)(A). Pub. L. 99-514 substituted "announce (in a manner intended to provide notice to interested parties)" for "publish" in introductory provisions.

Pub. L. 99-272, § 9211(d), inserted ", and shall publish not later than September 7 before the calendar year concerned" after "The Secretary shall annually determine" in introductory provisions.

Subsec. (a)(3). Pub. L. 99-272, § 9211(a)(2), substituted "Subject to subsection (c)(7) of this section, payments" for "Payments".

Subsec. (a)(6). Pub. L. 99-272, § 9211(a)(3), substituted "Subject to subsection (e)(7) of this section, if" for "If".

Subsec. (c)(3)(B). Pub. L. 99-272, § 9211(b), substituted "the date on which" for "a full calendar month after", and inserted provision at end that in the case of an individual's termination of enrollment, the organization shall provide the individual with a copy of the written request for termination of enrollment and a written explanation of the period (ending on the effective date of the termination) during which the individual continues to be enrolled with the organization and may not receive benefits under this subchapter other than through the organization.

Subsec. (c)(3)(C). Pub. L. 99-272, § 9211(c), inserted provisions at end that no brochures, application forms, or other promotional or informational material may be distributed by an organization to (or for the use of) individuals eligible to enroll with the organization under this section unless at least 45 days before its distribution, the organization has submitted the material to the Secretary for review and the Secretary has not disapproved the distribution of the material, and that Secretary shall review all such material submitted and shall disapprove such material if the Secretary determines, in the Secretary's discretion, that the material is materially inaccurate or misleading or otherwise makes a material misrepresentation.

Subsec. (c)(7). Pub. L. 99-272, § 9211(a)(1), added par. (7).

Subsec. (c)(3)(E). Pub. L. 99-509, § 9312(b)(1), added subpar. (E).

Subsec. (f)(2). Pub. L. 99-509, § 9312(c)(1), struck out "if the Secretary determines that" after "imposed by paragraph (1) only", added new subpars. (A) and (B), and struck out former subpars. (A) and (B) which read as follows:

"(A) special circumstances warrant such modification or waiver, and

"(B) the eligible organization has taken and is making reasonable efforts to enroll individuals who are not entitled to benefits under this subchapter or under a State plan approved under subchapter XIX of this chapter."

Subsec. (f)(3). Pub. L. 99-509, § 9312(c)(2)(A), added par. (3).

Subsec. (g)(6). Pub. L. 99-509, § 9312(d)(1), added par. (6).

Subsec. (i)(1)(C). Pub. L. 99-509, § 9312(c)(3)(B), substituted "(e), and (f)" for "and (e)".

Subsec. (i)(3)(C). Pub. L. 99-509, § 9312(e)(1), designated existing provisions as cl. (i) and added cls. (ii) and (iii).

Subsec. (i)(6). Pub. L. 99-509, § 9312(f), added par. (6).

Subsec. (i)(7). Pub. L. 99-509, § 9353(e)(2), added par. (7).

1984—Subsec. (b)(2)(D). Pub. L. 98-369, § 2354(b)(37), substituted "subparagraph (A)" for "paragraph (1)".

Subsec. (c)(3)(A). Pub. L. 98-369, § 2350(a)(1), designated existing provisions as cl. (i), inserted "and including the 30-day period specified under clause (ii)" after "30 days duration every year", and added cl. (ii).

Subsec. (c)(4)(A)(i). Pub. L. 98-369, § 2354(b)(38), substituted "with reasonable promptness" for "promptly as appropriate".

Subsec. (g)(2). Pub. L. 98-369, § 2350(b)(1), inserted "and except that an organization (with the approval of the Secretary) may provide that a part of the value of such additional benefits be withheld and reserved by the Secretary as provided in paragraph (5)" at end of first sentence.

Subsec. (g)(4)(A). Pub. L. 98-369, § 2350(c), inserted "and skilled nursing facilities" after "hospitals", inserted "or the appropriate basis for payment established under this subchapter" after "section 1395x(v) of this title)", and struck out "hospital" before "services furnished to individuals".

Subsec. (g)(5). Pub. L. 98-369, § 2350(b)(2), added par. (5).

1983—Subsec. (a)(5)(A)(ii), (B)(ii). Pub. L. 98-21, § 606(a)(3)(H), substituted "1395r(a)(1)" for "1395r(c)(1)".

Subsec. (g)(1). Pub. L. 97-448 substituted "subsection (b)" for "subsection (b)(1)".

Subsec. (g)(4). Pub. L. 98-21, § 602(g), added par. (4).

1982—Pub. L. 97-248 completely revised section, expanding its coverage to permit payments to both health maintenance organizations and competitive medical plans.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 1895(b)(11)(B) of Pub. L. 99-514 provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to determinations of per capita payment rates for 1987 and subsequent years."

Section 9312(b)(2) of Pub. L. 99-509 provided that: "The amendment made by paragraph (1) [amending this section] shall take effect on January 1, 1987, and shall apply to enrollments effected on or after such date."

Section 9312(c)(3) of Pub. L. 99-509 provided that:

"(A) NEW RESTRICTION.—The amendment made by paragraph (1) [amending this section] shall apply to modifications and waivers granted after the date of the enactment of this Act [Oct. 21, 1986].

"(B) SANCTIONS FOR NONCOMPLIANCE.—The amendments made by paragraph (2) [amending this section] shall take effect on the date of the enactment of this Act.

"(C) TREATMENT OF CURRENT WAIVERS.—In the case of an eligible organization (or successor organization) that—

"(i) as of the date of the enactment of this Act, has been granted, under paragraph (2) of section 1876(f) of the Social Security Act [subsec. (f)(2) of this section], a modification or waiver of the requirement imposed by paragraph (1) of that section, but

"(ii) does not meet the requirement for such modification or waiver under the amendment made by paragraph (1) of this subsection,

the organization shall make, and continue to make, reasonable efforts to meet scheduled enrollment goals, consistent with a schedule of compliance approved by the Secretary of Health and Human Services. If the Secretary determines that the organization has complied, or made significant progress tewards compliance, with such schedule of compliance, the Secretary may extend such waiver. If the Secretary determines that the organization has not complied with such schedule, the Secretary may provide for a sanction described in section 1876(f)(3) of the Social Security Act [subsec. (f)(3) of this section] (as amended by this section) effective with respect to individuals enrolling with the organization after the date the Secretary notifies the organization of such noncompliance."

Section 9312(d)(2) of Pub. L. 99-509 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to risk-sharing contracts under section 1876 of the Social Security Act [this section] with respect to services furnished on or after January 1, 1987."

Section 9312(e)(2) of Pub. L. 99-509 provided that: "The amendments made by paragraph (1) [amending this section] shall apply to contracts as of January 1, 1987."

Section 9353(e)(3)(B) of Pub. L. 99-509 provided that: "The amendment made by paragraph (2) [amending this section] shall apply to risk-sharing contracts with eligible organizations, under section 1876 of the Social Security Act [this section], as of April 1, 1987."

Section 9211(e) of Pub. L. 99-272 provided that:

"(1) FINANCIAL RESPONSIBILITY.—The amendments made by subsection (a) [amending this section] shall apply to enrollments and disenrollments that become effective on or after the date of the enactment of this Act [Apr. 7, 1986].

"(2) DISENROLLMENTS.—The amendments made by subsection (b) [amending this section] shall apply to requests for termination of enrollment submitted on or after May 1, 1986.

"(3) MATERIAL REVIEW.—(A) The amendment made by subsection (c) [amending this section] shall not apply to material which has been distributed before July 1, 1986.

"(B) Such amendment also shall not apply so as to require the submission of material which is distributed before July 1, 1986.

"(C) Such amendment shall also not apply to material which the Secretary detormines has been prepared before the date of the enactment of this Act [Apr. 7, 1986] and for which a commitment for distribution has been made, if the application of such amendment would constitute a hardship for the organization involved.

"(4) PUBLICATION.—The amendment made by subsection (d) [amending this section] shall apply te determinations of per capita rates of payment for 1987 and subsequent years.

"(5) NECESSARY MODIFICATION OF CONTRACTS.—The Secretary of Health and Human Services shall provide for such changes in the risk-sharing contracts which have been entered into under section 1876 of the Social Security Act [this section] as may be necessary te conform to the requirements imposed by the

amendments made by this section [amending this section] on a timely basis."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2350(d) of Pub. L. 98-369 provided that: "The amendments made by this section [amending subsecs. (c) and (g) of this section and enacting provisions set out as notes under this section] shall become effective on the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2354(b)(37), (38) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS; TRANSITIONAL RULE

Amendment by section 602 of Pub. L. 98-21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98-21, set out as a note under section 1395ww of this title.

Amendment by section 606 of Pub. L. 98-21 applicable to premiums for months beginning with January 1984, but for months after June 1983 and before January 1984, the monthly premium for June 1983 shall apply to individuals enrolled under parts A and B of this subchapter, see section 606(c) of Pub. L. 98-21, set out as a note under section 1395r of this title.

Amendment by section 309(b)(12) of 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 114(c) of Pub. L. 97-248, as amended by Pub. L. 98-369, div. B, title III, § 2354(c)(3)(A), (B), July 18, 1984, 98 Stat. 1102; Pub. L. 98-617, § 3(a)(5), Nov. 8, 1984, 98 Stat. 3295; Pub. L. 99-509, title IX, § 9312(a), Oct. 21, 1986, 100 Stat. 1999, provided that:

[*See main edition for text of (1)*]

"(2) [*See main edition for text of (A) and (B)*]

"(C) For purposes of this paragraph, the term 'current, nonrisk medicare enrollee' means, with respect to an organization, an individual who on the initial effective date—

"(i) is enrolled with that organization under an existing cost contract, and

"(ii) is entitled to benefits under part A and enrolled under part B, or enrolled in part B, of title XVIII of the Social Security Act [this subchapter].

[*See main edition for text of (D)*]

"(E) The preceding provisions of this paragraph shall not to [sic] apply to payments made for current, nonrisk medicare enrollees for months beginning with April 1987.

"(3) For purposes of this subsection:

[*See main edition for text of (A) to (D)*]

"(E) The term 'reasonable cost reimbursement contract' means a contract entered into under section 1876(h) of such Act [subsec. (h) of this section], as amended by this Act, or reimbursement on a reasonable cost basis under section 1833(a)(1)(A) of such Act [section 1395*l*(a)(1)(A) of this title].

"(4) As used in this section, the term 'initial effective date' means—

"(A) the first day of the thirteenth month which begins after the date of the enactment of this Act [Sept. 3, 1982], or

"(B) the first day of the first month [Feb. 1, 1985] after the month in which the Secretary of Health and Human Services notifies the Committee on Finance of the Senate and the Committees on Ways and Means and on Energy and Commerce of the House of Representatives that he is reasonably certain that the methodology to make appropriate adjustments (referred to in section 1876(a)(4) of the Social Security Act [subsec. (a)(4) of this section], as amended by this Act [Pub. L. 97-248]) has been developed and can be implemented to assure actuarial equivalence in the estimation of adjusted average per capita costs under that section,

whichever is later."

STUDY OF AAPCC AND ACR

Section 9312(g) of Pub. L. 99-509 provided that: "The Secretary of Health and Human Services shall provide, through contract with an appropriate organization, for a study of the methods by which—

"(1) the adjusted average per capita cost ('AAPCC', as defined in section 1876(a)(4) of the Social Security Act [42 U.S.C. 1395mm(a)(4)]) can be refined to more accurately reflect the average cost of providing care to different classes of patients, and

"(2) the adjusted community rate ('ACR', as defined in section 1876(e)(3) of such Act) can be refined.

The Secretary shall submit to Congress, by not later than January 1, 1988, specific legislative recommendations concerning methods by which the calculation of the AAPCC and the ACR can be refined."

ALLOWING MEDICARE BENEFICIARIES TO DISENROLL AT LOCAL SOCIAL SECURITY OFFICES

Section 9312(h) of Pub. L. 99-509 provided that: "The Secretary of Health and Human Services shall provide that individuals enrolled with an eligible organization under section 1876 of the Social Security Act [42 U.S.C. 1395mm] may disenroll, on and after June 1, 1987, at any local office of the Social Security Administration."

USE OF RESERVE FUNDS

Section 9312(i) of Pub. L. 99-509 provided that: "Notwithstanding any provision of section 1876(g)(5) of the Social Security Act (42 U.S.C. 1395mm(g)(5)) to the contrary, funds reserved by an eligible organization under such section before the date of the enactment of this Act [Oct. 21, 1986] may be applied, at the organization's option, to offset the amount of any reduction in payment amounts to the organization effected under Public Law 99-177 [Dec. 12, 1985, 99 Stat. 1037, see Tables for classification] during fiscal year 1986."

PHASE-IN OF ENROLLMENT PERIOD BY SECRETARY

Section 2350(a)(2) of Pub. L. 98-369 provided that: "The Secretary of Health and Human Services may phase in, over a period of not longer than three years, the application of the amendments made by paragraph (1) [amending subsec. (c)(3)(A) of this section] to all applicable areas in the United States if the Secretary determines that it is not administratively feasible to establish a single 30-day open enrollment period for all such applicable areas before the end of the period."

STABILIZATION FUND; ESTABLISHMENT LIMITATION

Section 2350(b)(3) of Pub. L. 98-369 provided that: "The Secretary of Health and Human Services may not approve the establishment of a stabilization fund by an eligible organization under section 1876(g)(5) of the Social Security Act [42 U.S.C. 1395mm(g)(5)] for any contract period beginning later than four years

after the date of the enactment of this Act [July 18, 1984]."

STABILIZATION FUND; USES; REPORT TO CONGRESS

Section 2350(b)(4) of Pub. L. 98-369 provided that: "The Secretary of Health and Human Services shall report to the Congress with respect to the use of stabilization funds by eligible organizations under section 1876(g)(5) of the Social Security Act [42 U.S.C. 1395mm(g)(5)], and shall assess the need for such funds. The report shall be submitted not later than 54 months after the month in which this Act is enacted [July 1984]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320a-1, 1320a-7a, 1320c-2, 1320c-3, 1320c-13, 1395f, 1395*l*, 1395x, 1395*ll*, 1395ww, 1396d of this title; title 2 section 906.

§ 1395nn. Offenses and penalties

[*See main edition for text of (a)*]

(b) Illegal remunerations

[*See main edition for text of (1) and (2)*]

(3) Paragraphs (1) and (2) shall not apply to—

(A) a discount or other reduction in price obtained by a provider of services or other entity under this subchapter if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under this subchapter;

(B) any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services; and

(C) any amount paid by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of individuals or entities who are furnishing services reimbursed under this subchapter if—

(i) the person has a written contract, with each such individual or entity which specifies the amount to be paid the person, which amount may be a fixed amount or a fixed percentage of the value of the purchases made by each such individual or entity under the contract, and

(ii) in the case of an entity that is a provider of services, the person discloses (in such form and manner as the Secretary requires) to the entity and, upon request, to the Secretary the amount received from each such vendor with respect to purchases made by or on behalf of the entity.

[*See main edition for text of (c)*]

(d) Violation of assignment terms

Whoever accepts assignments described in section 1395u(b)(3)(B)(ii) of this title or agrees to be a participating physician or supplier under section 1395u(h)(1) of this title and knowingly, willfully, and repeatedly violates the term of such assignments or agreement, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $2,000 or imprisoned for not more than six months, or both.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2306(f)(2), 98 Stat. 1073; Oct. 21, 1986, Pub. L. 99-509, title IX, § 9321(a)(1), 100 Stat. 2016.)

AMENDMENTS

1986—Subsec. (b)(3)(C). Pub. L. 99-509 added subpar. (C).

1984—Subsec. (d). Pub. L. 98-369 inserted "or agrees te be a participating physician or supplier under section 1395u(h)(1) of this title" after "section 1395u(b)(3)(B)(ii) of this title", and substituted "or agreement" for "specified in subclause (I) of such section".

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9321(a)(2) of Pub. L. 99-509 provided that: "The amendments made by paragraph (1) [amending this section] apply to payments made before, on, or after the date of the enactment of this Act [Oct. 21, 1986]."

§ 1395oo. Provider Reimbursement Review Board

(a) Establishment

Any provider of services which has filed a required cost report within the time specified in regulations may obtain a hearing with respect to such cost report by a Provider Reimbursement Review Board (hereinafter referred to as the "Board") which shall be established by the Secretary in accordance with subsection (h) of this section and (except as provided in subsection (g)(2) of this section) any hospital which receives payments in amounts computed under subsection (b) or (d) of section 1395ww of this title and which has submitted such reports within such time as the Secretary may require in order to make payment under such section may obtain a hearing with respect to such payment by the Board, if—

(1) such provider—

(A)(i) is dissatisfied with a final determination of the organization serving as its fiscal intermediary pursuant to section 1395h of this title as to the amount of total program reimbursement due the provider for the items and services furnished to individuals for which payment may be made under this subchapter for the period covered by such report, or

(ii) is dissatisfied with a final determination of the Secretary as to the amount of the payment under subsection (b) or (d) of section 1395ww of this title,

[*See main edition for text of (B) and (C), (2)*]

(3) such provider files a request for a hearing within 180 days after notice of the intermediary's final determination under paragraph (1)(A)(i), or with respect to appeals under paragraph (1)(A)(ii), 180 days after notice of the Secretary's final determination, or with respect to appeals pursuant to paragraph (1) (B) or (C), within 180 days after notice of such determination would have been received if such determination had been made on a timely basis.

[*See main edition for text of (b)*]

(c) Right to counsel; rules of evidence

At such hearing, the provider of services shall have the right to be represented by counsel, to introduce evidence, and to examine and cross-examine witnesses. Evidence may be received at any such hearing even though inadmissible under rules of evidence applicable to court procedure.

[*See main edition for text of (d)*]

(e) Rules and regulations

The Board shall have full power and authority to make rules and establish procedures, not inconsistent with the provisions of this subchapter or regulations of the Secretary, which are necessary or appropriate to carry out the provisions of this section. In the course of any hearing the Board may administer oaths and affirmations. The provisions of subsections (d) and (e) of section 405 of this title with respect to subpenas shall apply to the Board to the same extent as they apply to the Secretary with respect to subchapter II of this chapter.

(f) Finality of decision; judicial review; determinations of Board authority; jurisdiction; venue; interest on amount in controversy

(1) A decision of the Board shall be final unless the Secretary, on his own motion, and within 60 days after the provider of services is notified of the Board's decision, reverses, affirms, or modifies the Board's decision. Providers shall have the right to obtain judicial review of any final decision of the Board, or of any reversal, affirmance, or modification by the Secretary, by a civil action commenced within 60 days of the date on which notice of any final decision by the Board or of any reversal, affirmance, or modification by the Secretary is received. Providers shall also have the right to obtain judicial review of any action of the fiscal intermediary which involves a question of law or regulations relevant to the matters in controversy whenever the Board determines (on its own motion or at the request of a provider of services as described in the following sentence) that it is without authority to decide the question, by a civil action commenced within sixty days of the date on which notification of such determination is received. If a provider of services may obtain a hearing under subsection (a) of this section and has filed a request for such a hearing, such provider may file a request for a determination by the Board of its authority to decide the question of law or regulations relevant to the matters in controversy (accompanied by such documents and materials as the Board shall require for purposes of rendering such determination). The Board shall render such determination in writing within thirty days after the Board receives the request and such accompanying documents and materials, and the determination shall be considered a final decision and not subject to review by the Secretary. If the Board fails to render such determination within such period, the provider may bring a civil action (within sixty days of the end of such period) with respect to the matter in controversy contained in such request for a hearing. Such action shall be brought in the district court of the United States for the judicial district in which the provider is located (or, in an action brought jointly by several providers, the judicial district in which the greatest number of such providers are located) or in the District Court for the District of Columbia and shall be tried pursuant to the applicable provisions under chapter 7 of title 5 notwithstanding any other provisions in section 405 of this title. Any appeal to the Board or action for judicial review by providers which are under common ownership or control or which have obtained a hearing under subsection (b) of this section must be brought by such providers as a group with respect to any matter involving an issue common to such providers.

[*See main edition for text of (2) and (3)*]

(g) Certain findings not reviewable

(1) The finding of a fiscal intermediary that no payment may be made under this subchapter for any expenses incurred for items or services furnished to an individual because such items or services are listed in section 1395y of this title shall not be reviewed by the Board, or by any court pursuant to an action brought under subsection (f) of this section.

(2) The determinations and other decisions described in section 1395ww(d)(7) of this title shall not be reviewed by the Board or by any court pursuant to an action brought under subsection (f) of this section or otherwise.

(h) Composition and compensation

The Board shall be composed of five members appointed by the Secretary without regard to the provisions of title 5 governing appointments in the competitive services. Two of such members shall be representative of providers of services. All of the members of the Board shall be persons knowledgeable in the field of payment of providers of services, and at least one of them shall be a certified public accountant. Members of the Board shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the rate specified (at the time the service involved is rendered by such members) for grade GS-18 in section 5332 of title 5. The term of office shall be three years, except that the Secretary shall appoint the initial members of the Board for shorter terms to the extent necessary to permit staggered terms of office.

[*See main edition for text of (i)*]

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, § 602(h), 97 Stat. 165; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2351(a)(1), (b)(1), 2354(b)(39), (40), 98 Stat. 1098, 1099, 1102.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369, § 2354(b)(39), substituted "inadmissible" for "inadmissable".

Subsec. (e). Pub. L. 98-369, § 2354(b)(40), substituted "and (e)" for ", (e), and (f)".

Subsec. (f)(1). Pub. L. 98-369, § 2351(a)(1), substituted "notification of such determination is received" for "such determination is rendered" in third sentence.

Pub. L. 98-369, § 2351(b)(1), inserted "or which have obtained a hearing under subsection (b) of this sec-

tion" after "common ownership or control" in last sentence.

1983—Subsec. (a). Pub. L. 98-21, § 602(h)(1)(A), inserted provision in introductory text that, except as provided in subsec. (g)(2) of this section, any hospital which receives payments in amounts computed under section 1395ww(b) or (d) of this title and which has submitted such reports within such time as the Secretary may require in order to make payment under such section may obtain a hearing with respect to such payment by the Board.

Subsec. (a)(1)(A). Pub. L. 98-21, § 602(h)(1)(B), (C), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(3). Pub. L. 98-21, § 602(h)(1)(D), substituted "(1)(A)(i), or with respect to appeals under paragraph (1)(A)(ii), 180 days after notice of the Secretary's final determination," for "(1)(A)".

Subsec. (f)(1). Pub. L. 98-21, § 602(h)(2), inserted "(or, in an action brought jointly by several providers, the judicial district in which the greatest number of such providers are located)" after "the judicial district in which the provider is located", and "Any appeal to the Board or action for judicial review by providers which are under common ownership or control must be brought by such providers as a group with respect to any matter involving an issue common to such providers."

Subsec. (g). Pub. L. 98-21, § 602(h)(3), designated existing provisions as par. (1) and added par. (2).

Subsec. (h). Pub. L. 98-21, § 602(h)(4), substituted "payment of providers of services" for "cost reimbursement".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2351(a)(2) of Pub. L. 98-369 provided that: "The amendment made by paragraph (1) [amending this section] shall be effective with respect to any civil action commenced on or after the dato of the enactment of this Act [July 18, 1984]."

Section 2351(b)(2) of Pub. L. 98-369 provided that: "The amendment made by paragraph (1) [amending this section] shall be effective with respect to any appeal or action brought on or after the date of the enactment of this Act [July 18, 1984]."

Amendinent by section 2354(b)(39), (40) of Pub. L. 98-369 effective July 18, 1984, but not te be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that dato, see section 2354(e)(1) of Pub. L. 98-389, set out as a note under section 1320a-1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after Nov. 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98-21, set out as a note under section 1395ww of this title. See, also, section 2351(c) of Pub. L. 98-369, set out as a note below.

REVIEW OF PROVIDER REIMBURSEMENT REVIEW BOARD DECISIONS

Section 2351(c) of Pub. L. 98-369 provided that: "Notwithstanding section 604 of the Social Security Amendments of 1983 (Public Law 98-21) [set out as an Effective Date of 1983 Amendments note under section 1395ww of this title]—

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

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395h, 1395rr, 1395ww of this title.

§ 1395pp. Limitation on liability where claims are disallowed

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

Where—

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

[*See main edition for text of (2)*]

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

[*See main edition for text of (b)*]

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

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

(d) Exercise of rights

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

[*See main edition for text of* (e)]

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

(1) A home health agency which meets the applicable requirements of paragraphs (3) and (4) shall be presumed to meet the requirement of subsection (a)(2) of this section with respect to any coverage denial described in subsection (g) of this section.

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

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

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

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

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

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

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

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

(g) Coverage denial defined

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

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

(2) does or did not need skilled nursing care on an intermittent basis.

(As amended Oct. 21, 1986, Pub. L. 99-509, title IX, §§ 9305(g)(1), 9341(a)(3), 100 Stat. 1991, 2038.)

AMENDMENTS

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

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

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

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

EFFECTIVE AND TERMINATION DATES OF 1986 AMENDMENT

Section 9305(g)(3) of Pub. L. 99-509 provided that: "The amendments made by paragraph (1) [amending this section] shall apply to coverage denials occurring on or after July 1, 1987, and before October 1, 1989."

Amendment by section 9341(a)(3) of Pub. L. 99-509 applicable to items and services furnished on or after Jan. 1, 1987, see section 9341(b) of Pub. L. 99-509, set out as an Effective Date of 1986 Amendment note under section 1395ff of this title.

REPORTS TO CONGRESS ON DENIALS OF BILLS FOR PAYMENT

Section 9305(g)(2) of Pub. L. 99-509 provided that: "The Secretary of Health and Human Services shall report to Congress annually in March of 1987 and 1988—

"(A) information on the frequency and distribution (by type of provider) of denials of bills for payment under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] for extended care services, home health services, and hospice care, by reason of section 1862(a)(1) or (9) of such Act [42 U.S.C. 1395y(a)(1), (9)], and coverage denials described in section 1879(g) of such Act [42 U.S.C. 1395pp(g)], including—

"(i) the reasons for such denials,

"(ii) the extent to which payments were nonetheless made because of section 1879 of such Act, and

"(iii) the rate of reversals of such denials, and

"(B) such other information as may be appropriate to evaluate the appropriateness of any percentage standards established for the granting of favorable presumptions with respect to such denials."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320c-3, 1395h, 1395*ll* of this title.

§ 1395rr. End stage renal disease program

(a) Type, duration, and scope of benefits

The benefits provided by parts A and B of this subchapter shall include benefits for individuals who have been determined to have end stage renal disease as provided in section 426-1 of this title, and benefits for kidney donors as provided in subsection (d) of this section. Notwithstanding any other provision of this subchapter, the type, duration, and scope of the benefit provided by parts A and B of this subchapter with respect to individuals who have been determined to have end stage renal disease and who are entitled to such benefits without regard to section 426-1 of this title shall in no case be less than the type, duration, and scope of the benefits so provided for individuals entitled to such benefits solely by reason of that section.

(b) Payments with respect to services; dialysis; regulations; physicians' services; target reimbursement rates; home dialysis supplies and equipment; self-care home dialysis support services; self-care dialysis units; hepatitis B vaccine

(1) Payments under this subchapter with respect to services, in addition to services for which payment would otherwise be made under this subchapter, furnished to individuals who have been determined to have end stage renal disease shall include (A) payments on behalf of such individuals to providers of services and renal dialysis facilities which meet such requirements as the Secretary shall by regulation prescribe for institutional dialysis services and supplies (including self-dialysis services in a self-care dialysis unit maintained by the provider or facility), transplantation services, self-care home dialysis support services which are furnished by the provider or facility, and routine professional services performed by a physician during a maintenance dialysis episode if payments for his other professional services furnished to an individual who has end stage renal disease are made on the basis specified in paragraph (3)(A) of this subsection, and (B) payments to or on behalf of such individuals for home dialysis supplies and equipment. The requirements prescribed by the Secretary under subparagraph (A) shall include requirements for a minimum utilization rate for covered procedures and for self-dialysis training programs.

(2)(A) With respect to payments for dialysis services furnished by providers of services and renal dialysis facilities to individuals determined to have end stage renal disease for which payments may be made under part B of this subchapter, such payments (unless otherwise provided in this section) shall be equal to 80 percent of the amounts determined in accordance with subparagraph (B); and with respect to payments for services for which payments may be made under part A of this subchapter, the amounts of such payments (which amounts shall not exceed, in respect to costs in procuring organs attributable to payments made to an organ procurement agency or histocompatibility laboratory, the costs incurred by that agency or laboratory) shall be determined in accordance with section 1395x(v) of this title or section 1395ww of this title (if applicable). Payments shall be made to a renal dialysis facility only if it agrees to accept such payments as payment in full for covered services, except for payment by the individual of 20 percent of the estimated amounts for such services calculated on the basis established by the Secretary under subparagraph (B) and the deductible amount imposed by section 1395*l*(b) of this title.

(B) The Secretary shall prescribe in regulations any methods and procedures to (i) determine the costs incurred by providers of services and renal dialysis facilities in furnishing covered services to individuals determined to have end stage renal disease, and (ii) determine, on a cost-related basis or other economical and equitable basis (including any basis authorized under section 1395x(v) of this title) and consistent with any regulations promulgated under paragraph (7), the amounts of payments to be made for part B services furnished by such providers and facilities to such individuals.

[*See main edition for text of* (C) *and* (D)]

(3) With respect to payments for physicians' services furnished to individuals determined to have end stage renal disease, the Secretary shall pay 80 percent of the amounts calculated for such services—

[*See main edition for text of* (A) *and* (B), (4) *to* (6)]

(7) The Secretary shall provide by regulation for a method (or methods) for determining prospectively the amounts of payments to be made for dialysis services furnished by providers of services and renal dialysis facilities to individuals in a facility and to such individuals at home. Such method (or methods) shall provide for the prospective determination of a rate (or rates) for each mode of care based on a single composite weighted formula (which takes into account the mix of patients who receive dialysis services at a facility or at home and the relative costs of providing such services in such settings) for hospital-based facilities and such a single composite weighted formula for other renal dialysis facilities, or based on such other method or combination of methods which differentiate between hospital-based facilities and other renal dialysis facilities and which the Secretary determines, after detailed analysis, will more effectively encourage the more efficient delivery of dialysis services and will provide greater incentives for increased use of home dialysis than through the single composite weighted formulas. The Secretary shall provide for such exceptions to such methods as

may be warranted by unusual circumstances (including the special circumstances of sole facilities located in isolated, rural areas and of pediatric facilities). Each application for such an exception shall be deemed to be approved unless the Secretary disapproves it by not later than 60 working days after the date the application is filed. The Secretary may provide that such method will serve in lieu of any target reimbursement rate that would otherwise be established under paragraph (6). The Secretary shall reduce the amount of each composite rate payment under this paragraph for each treatment by 50 cents (subject to such adjustments as may be required to reflect modes of dialysis other than hemodialysis) and provide for payment of such amount to the network administrative organization (designated under subsection (c)(1)(A) of this section for the network area in which the treatment is provided) for its necessary and proper administrative costs incurred in carrying out its responsibilities under subsection (c)(2) of this section.

(8) For purposes of this subchapter, the term "home dialysis supplies and equipment" means medically necessary supplies and equipment (including supportive equipment) required by an individual suffering from end stage renal disease in connection with renal dialysis carried out in his home (as defined in regulations), including obtaining, installing, and maintaining such equipment.

[*See main edition for text of (9) and (10)*]

(11) Hepatitis B vaccine and its administration, when provided to a patient determined to have end stage renal disease, shall not be included as dialysis services for purposes of payment under any prospective payment amount or comprehensive fee established under this section. Payment for such vaccine and its administration shall be made separately in accordance with section 1395*l* of this title.

(c) Renal disease network areas; coordinating councils, executive committees, and medical review boards; national end stage renal disease medical information system; functions of network organizations

(1)(A)(i) For the purpose of assuring effective and efficient administration of the benefits provided under this section, the Secretary shall, in accordance with such criteria as he finds necessary to assure the performance of the responsibilities and functions specified in paragraph (2)—

(I) establish at least 17 end stage renal disease network areas, and

(II) for each such area, designate a network administrative organization which, in accordance with regulations of the Secretary, shall establish (aa) a network council of renal dialysis and transplant facilities located in the area and (bb) a medical review board, which has a membership including at least one patient representative and physicians, nurses, and social workers engaged in treatment relating to end stage renal disease.

The Secretary shall publish in the Federal Register a description of the geographic area that he determines, after consultation with appropriate professional and patient organizations, constitutes each network area and the criteria on the basis of which such determination is made.

(ii)(I) In order to determine whether the Secretary should enter into, continue, or terminate an agreement with a network administrative organization designated for an area established under clause (i), the Secretary shall develop and publish in the Federal Register standards, criteria, and procedures to evaluate an applicant organization's capabilities to perform (and, in the case of an organization with which such an agreement is in effect, actual performance of) the responsibilities described in paragraph (2). The Secretary shall evaluate each applicant based on quality and scope of services and may not accord more than 20 percent of the weight of the evaluation to the element of price.

(II) An agreement with a network administrative organization may be terminated by the Secretary only if he finds, after applying such standards and criteria, that the organization has failed to perform its prescribed responsibilities effectively and efficiently. If such an agreement is to be terminated, the Secretary shall select a successor to the agreement on the basis of competitive bidding and in a manner that provides an orderly transition.

(B) At least one patient representative shall serve as a member of each network council and each medical review board.

[*See main edition for text of (C)*]

(2) The network organizations of each network shall be responsible, in addition to such other duties and functions as may be prescribed by the Secretary, for—

(A) encouraging, consistent with sound medical practice, the use of those treatment settings most compatible with the successful rehabilitation of the patient and the participation of patients, providers of services, and renal disease facilities in vocational rehabilitation programs;

(B) developing criteria and standards relating to the quality and appropriateness of patient care and with respect to working with patients, facilities, and providers in encouraging participation in vocational rehabilitation programs; and network goals with respect to the placement of patients in self-care settings and undergoing or preparing for transplantation;

(C) evaluating the procedure by which facilities and providers in the network assess the appropriateness of patients for proposed treatment modalities;

(D) implementing a procedure for evaluating and resolving patient grievances;

(E) conducting on-site reviews of facilities and providers as necessary (as determined by a medical review board or the Secretary), utilizing standards of care established by the network organization to assure proper medical care;

(F) collecting, validating, and analyzing such data as are necessary to prepare the reports required by subparagraph (H) and subsection (g) of this section and to assure the

maintenance of the registry established under paragraph (7);

(G) identifying facilities and providers that are not cooperating toward meeting network goals and assisting such facilities and providers in developing appropriate plans for correction and reporting to the Secretary on facilities and providers that are not providing appropriate medical care; and

(H) submitting an annual report to the Secretary on July 1 of each year which shall include a full statement of the network's goals, data on the network's performance in meeting its goals (including data on the comparative performance of facilities and providers with respect to the identification and placement of suitable candidates in self-care settings and transplantation and encouraging participation in vocational rehabilitation programs), identification of those facilities that have consistently failed to cooperate with network goals, and recommendations with respect to the need for additional or alternative services or facilities in the network in order to meet the network goals, including self-dialysis training, transplantation, and organ procurement facilities.

(3) Where the Secretary determines, on the basis of the data contained in the network's annual report and such other relevant data as may be available to him, that a facility or provider has consistently failed to cooperate with network plans and goals or to follow the recommendations of the medical review board, he may terminate or withhold certification of such facility or provider (for purposes of payment for services furnished to individuals with end stage renal disease) until he determines that such provider or facility is making reasonable and appropriate efforts to cooperate with the network's plans and goals. If the Secretary determines that the facility's or provider's failure to cooperate with network plans and goals does not jeopardize patient health or safety or justify termination of certification, he may instead, after reasonable notice to the provider or facility and to the public, impose such other sanctions as he determines to be appropriate, which sanctions may include denial of reimbursement with respect to some or all patients admitted to the facility after the date of notice to the facility or provider, and graduated reduction in reimbursement for all patients.

[*See main edition for text of* (4) *and* (5)]

(6) It is the intent of the Congress that the maximum practical number of patients who are medically, socially, and psychologically suitable candidates for home dialysis or transplantation should be so treated and that the maximum practical number of patients who are suitable candidates for vocational rehabilitation services be given access to such services and encouraged to return te gainful employment. The Secretary shall consult with appropriate professional and network organizations and consider available evidence relating to developments in research, treatment methods, and technology for home dialysis and transplantation. The Secretary shall periodically submit to the Congress such legislative recommendations as the Secretary finds warranted on the basis of such consultation and evidence to further the national objective of maximizing the use of home dialysis and transplantation consistent with good medical practice.

(7) The Secretary shall establish a national end stage renal disease registry the purpose of which shall be to assemble and analyze the data reported by network organizations, transplant centers, and other sources on all end stage renal disease patients in a manner that will permit—

(A) the preparation of the annual report to the Congress required under subsection (g) of this section;

(B) an identification of the economic impact, cost-effectiveness, and medical efficacy of alternative modalities of treatment;

(C) an evaluation with respect to the most appropriate allocation of resources for the treatment and research into the cause of end stage renal disease;

(D) the determination of patient mortality and morbidity rates, and trends in such rates, and other indices of quality of care; and

(E) such other analyses relating to the treatment and management of end stage renal disease as will assist the Congress in evaluating the end stage renal disease program under this section.

The Secretary shall provide for such coordination of data collection activities, and such consolidation of existing end stage renal disease data systems, as is necessary to achieve the purpose of such registry, shall determine the appropriate location of the registry, and shall provide for the appointment of a professional advisory group to assist the Secretary in the formulation of policies and procedures relevant to the management of such registry.

[*See main edition for text of* (d) *and* (e)]

(f) Experiments, studies, and pilot projects

[*See main edition for text of* (1) *to* (6)]

(7)(A) The Secretary shall establish protocols on standards and conditions for the reuse of dialyzer filters for those facilities and providers which voluntarily elect to reuse such filters.

(B) With respect to dialysis services furnished on or after January 1, 1988, no dialysis facility may reuse dialysis supplies (other than dialyzer filters) unless the Secretary has established a protocol with respect to the reuse of such supplies and the facility follows the protocol so established.

(C) The Secretary shall incorporate protocols established under this paragraph, and the requirement of subparagraph (B), into the requirements for facilities prescribed under subsection (b)(1)(A) of this section and failure to follow such a protocol or requirement subjects such a facility to denial of participation in the program established under this section and to denial of payment for dialysis treatment not furnished in compliance with such a protocol or in violation of such requirement.

[*See main edition for text of (8); (g)*]

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, § 602(i), 97 Stat. 165; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2323(c), 2352(a), 2354(b)(41), 98 Stat. 1086, 1099, 1102; Nov. 8, 1984, Pub. L. 98-617, § 3(b)(8), 98 Stat. 3296; Oct. 21, 1986, Pub. L. 99-509, title IX, § 9335(a)(2), (d)(1), (e)-(i)(1), (j)(1), (k)(1), 100 Stat. 2029-2033.)

AMENDMENTS

1986—Subsec. (b)(7). Pub. L. 99-509, § 9335(j)(1), inserted at end "The Secretary shall reduce the amount of each composite rate payment under this paragraph for each treatment by 50 cents (subject to such adjustments as may be required to reflect modes of dialysis other than hemodialysis) and provide for payment of such amount to the network administrative organization (designated under subsection (c)(1)(A) of this section for the network area in which the treatment is provided) for its necessary and proper administrative costs incurred in carrying out its responsibilities under subsection (c)(2) of this section."

Pub. L. 99-509, § 9335(a)(2), inserted "and of pediatric facilities" after "isolated rural areas" in third sentence, and inserted after third sentence "Each application for such an exception shall be deemed to be approved unless the Secretary disapproves it by not later than 60 working days after the date the application is filed."

Subsec. (c)(1)(A). Pub. L. 99-509, § 9335(d)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "For the purpose of assuring effective and efficient administration of the benefits provided under this section, the Secretary shall establish, in accordance with such criteria as he finds appropriate, renal disease network areas, such network organizations (including a coordinating council, an executive committee of such council, and a medical review board, for each network area) as he finds necessary to accomplish such purpose, and a national end stage renal disease medical information system. The Secretary may by regulations provide for such coordination of network planning and quality assurance activities and such exchange of data and information among agencies with responsibilities for health planning and quality assurance activities under Federal law as is consistent with the economical and efficient administration of this section and with the responsibilities established for network organizations under this section."

Subsec. (c)(1)(B). Pub. L. 99-509, § 9335(e), amended subpar. (B) generally, substituting "network council and each medical review board" for "coordinating council and executive committee".

Subsec. (c)(2)(A). Pub. L. 99-509, § 9335(f)(1), inserted "and the participation of patients, providers of services, and renal disease facilities in vocational rehabilitation programs" before the semicolon.

Subsec. (c)(2)(B). Pub. L. 99-509, § 9335(f)(2), inserted "and with respect to working with patients, facilities, and providers in encouraging participation in vocational rehabilitation programs" before first semicolon.

Subsec. (c)(2)(D) to (F). Pub. L. 99-509, § 9335(f)(5), added subpara. (D) to (F). Former subpars. (D) and (E) redesignated (O) and (H), respectively.

Subsec. (c)(2)(G). Pub. L. 99-509, § 9335(f)(3), (5), redesignated former subpar. (D) as (G) and inserted "and reporting to the Secretary on facilities and providers that are not providing appropriato medical care" before the semicolon.

Subsec. (c)(2)(H). Pub. L. 99-509, § 9335(f)(4), (5), redesignated former subpar. (E) as (H) and inserted "and encouraging participation in vocational rehabilitation programs" after "and transplantation".

Subsec. (c)(3). Pub. L. 99-509, § 9335(g), inserted "or to follow the recommendations of the medical review beard" after "network plans and goals".

Subsec. (c)(6). Pub. L. 99-509, § 9335(h), inserted "and that the maximum practical number of patients who are suitable candidates for vocational rehabilitation services be given access to such services and encouraged to return to gainful employment" at end of first sentence.

Subsec. (c)(7). Pub. L. 99-509, § 9335(i)(1), added par. (7).

Subsec. (f)(7). Pub. L. 99-509, § 9335(k)(1), amended par. (7) generally. Prior to amendment, par. (7) read as follows: "The Secretary shall conduct a study of the medical appropriateness and safety of cleaning and reusing dialysis filters by home dialysis patients. In such cases in which the Secretary determines that such home cleaning and reuse of filters is a medically sound procedure, the Secretary shall conduct experiments to evaluate such home cleaning and reuse as a method of reducing the costs of the end stage renal disease program."

1984—Subsecs. (a), (b)(1), (2)(A), (B), (3), (8). Pub. L. 98-369, § 2354(b)(41), substituted "end stage" for "end-stage" wherever appearing.

Subsec. (b)(11). Pub. L. 98-617 realigned margin of par. (11).

Pub. L. 98-369, § 2323(c), added par. (11).

Subsec. (c)(3). Pub. L. 98-369, § 2352(a), inserted provision that if the Secretary determines that the facility's or provider's failure to cooperate with network plans and goals does not jeopardize patient health or safety or justify termination of certification, he may instead, after reasonable notice to the provider or facility and to the public, impose such other sanctions as he determines to be appropriate, which sanctions may include denial of reimbursement with respect to some or all patients admitted to the facility after the date of notice to the facility or provider, and graduated reduction in reimbursement for all patients.

1983—Subsec. (b)(2)(A). Pub. L. 98-21 inserted "or section 1395ww of this title (if applicable)" after "section 1395x(v) of this title".

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9335(a)(3) of Pub. L. 99-509 provided that: "The amendments made by paragraph (2) [amending this section] shall apply to applications filed on or after the date of the enactment of this Act [Oct. 21, 1986]."

Section 9335(j)(2) of Pub. L. 99-509 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to treatment furnished on or after January 1, 1987."

Section 9335(l) of Pub. L. 99-509 provided that: "The amendments made by subsections (e), (f), and (g) [amending this section] shall apply to network administrative organizations designated for network areas established under the amendment made by subsection (d)(1) [amending this section]."

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98-369, see section 3(c) of Pub. L. 98-617, set out as a note under section 1395f of this title.

Amendment by section 2323(c) of Pub. L. 98-369 applicable to services furnished on or after Sept. 1, 1984, see section 2323(d) of Pub. L. 98-369, set out as a note under section 1395l of this title.

Section 2352(b) of Pub. L. 98-369 provided that: "The amendment made by this section [amending this section] shall apply to determinations made by the Secretary on or after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2354(b)(41) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1)

of Pub. L. 98-369, set out as a note under section 1320a-1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after Nov. 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98-21, set out as a note under section 1395ww of this title.

RATES FOR DIALYSIS SERVICES PROVIDED FROM OCTOBER 1, 1986 TO OCTOBER 1, 1988

Section 9335(a)(1) of Pub. L. 99-509 provided that: "Effective with respect to dialysis services provided on or after Octeber 1, 1986, and before October 1, 1988, the Secretary of Health and Human Services shall establish the base rate for routine dialysis treatment in a free-standing facility and in a hospital-based facility under section 1881(b)(7) of the Social Security Act [42 U.S.C. 1395rr(b)(7)] at a level equal to the respective rate in effect as of May 13, 1986, reduced by $2.00."

STUDY AND REPORT ON MEDICARE PAYMENT RATE REDUCTIONS FOR PATIENTS WITH END STAGE RENAL DISEASE

Section 9335(b) of Pub. L. 99-509 provided that:

"(1) IN GENERAL.—The Secretary of Health and Human Services shall provide for—

"(A) a study to evaluate the effects of reductions in the rates of payment for facility and physicians' services under the medicare program for patients with end stage renal disease on their access to care or on the quality of care, and

"(B) a report to Congress on the results of the study by not later than January 1, 1988.

"(2) ARRANGEMENTS WITH INSTITUTE OF MEDICINE.—The Secretary shall request the National Academy of Sciences, acting through appropriate units, to submit an application to conduct the study described in paragraph (1). If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application."

DEADLINE FOR ESTABLISHING NEW END STAGE RENAL DISEASE NETWORK AREAS; TRANSITION

Section 9335(d)(2), (3) of Pub. L. 99-509 provided that:

"(2) DEADLINE FOR ESTABLISHING NEW AREAS.—The Secretary of Health and Human Services shall establish end stage renal disease network areas, pursuant to the amendment made by paragraph (1) [amending this section], not later than May 1, 1987. The Secretary shall establish network administrative organizations for such areas by not later than July 1, 1987.

"(3) TRANSITION.—If, under the amendment made by paragraph (1), the Secretary designates a network administrative organization for an area which was not previously designated for that area, the Secretary shall offer to continue to fund the previously designated organization for that area for a period of 30 days after the first date the newly designated organization assumes the duties of a network administrative organization for that area."

REPORT ON ESTABLISHMENT OF NATIONAL END STAGE RENAL DISEASE REGISTRY

Section 9335(i)(2) of Pub. L. 99-509 provided that: "The Secretary of Health and Human Services shall submit to the Congress, no later than April 1, 1987, a full report on the progress made in establishing the national end stage renal disease registry under the amendment made by paragraph (1) [amending this section] and shall establish such registry by not later than January 1, 1988."

DEADLINE FOR ESTABLISHMENT OF PROTOCOLS ON REUSE OF DIALYZER FILTERS

Section 9335(k)(2) of Pub. L. 99-509 provided that: "The Secretary of Health and Human Services shall establish the protocols described in section 1881(f)(7)(A) of the Social Security Act [42 U.S.C. 1395rr(f)(7)(A)] by not later than October 1, 1987."

LIMITATION ON MERGER OF END STAGE RENAL DISEASE NETWORKS

Pub. L. 99-272, title IX, § 9214, Apr. 7, 1986, 100 Stat. 180, provided that: "The Secretary of Health and Human Services shall maintain renal disease network organizations as authorized under section 1881(c) of the Social Security Act [42 U.S.C. 1395rr(c)], and may not merge the network organizations into other organizations or entities. The Secretary may consolidate such network organizations, but only if such consolidation does not result in fewer than 14 such organizations being permitted to exist."

§ 1395tt. Hospital providers of extended care services

REFERENCES IN TEXT

Section 300m of this title, referred to in subsec. (b)(2), was repealed effective Jan. 1, 1987, by Pub. L. 99-660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799.

§ 1395uu. Payments to promote closing or conversion of underutilized hospital facilities

PAYMENTS TO PROMOTE CLOSURE AND CONVERSION OF UNDERUTILIZED HOSPITAL FACILITIES

Pub. L. 98-369, div. B, title III, § 2353, July 18, 1984, 98 Stat. 1099, provided that:

"(a) The Secretary of Health and Human Services shall carry out a study and report to the Congress on the modifications required in section 1884 of the Social Security Act [this section] in order to conform the closure and conversion program authorized in that section to the prospective payment system under section 1886(d) of such Act [section 1395ww(d) of this title], so as to provide assistance to hospitals which may have particular problems in converting facilities (or parts thereof) from acute care to less intensive care or in closing facilities (or parts thereof). The report shall include recommendations as to how, and whether, implementation of section 1884 [this section] as modified may result in reductions in total hospital inpatient costs and total expenditures under title XVIII of the Social Security Act [this subchapter]. The Secretary shall submit the report prior to March 31, 1985.

"(b) During the period prior to March 31, 1985, and notwithstanding section 2101(c) of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35) [set out as a note under this section], the Secretary shall not implement section 1884 of the Social Security Act [this section]."

§ 1395ww. Payments to hospitals for inpatient hospital services

(a) Determination of costs for inpatient hospital services; limitations; exemptions; "operating costs of inpatient hospital services" defined

(I) [*See main edition for text of (A) to (C)*]

(D) Subparagraph (A) shall not apply to cost reporting periods beginning on or after October 1, 1983.

(2) The Secretary shall provide for such exemptions from, and exceptions and adjustments to, the limitation established under paragraph (1)(A) as he deems appropriate, including those which he deems necessary te take into account—

[*See main edition for text of (A)*]

(B) the special needs of psychiatric hospitals and of public or other hospitals that serve a significantly disproportionate number of patients who have low income or are entitled to benefits under part A of this subchapter, and

[*See main edition for text of (C), (3)*]

(4) For purposes of this section, the term "operating costs of inpatient hospital services" includes all routine operating costs, ancillary service operating costs, and special care unit operating costs with respect to inpatient hospital services as such costs are determined on an average per admission or per discharge basis (as determined by the Secretary). Such term does not include costs of approved educational activities [11] a return on equity capital, or, with respect to costs incurred in cost reporting periods beginning prior to October 1 of 1987 (or of such later year as the Secretary may, in his discretion, select), other capital-related costs, as defined by the Secretary.

(b) Computation of payment; definitions; exemptions; adjustments

(1) Notwithstanding section 1395f(b) of this title but subject to the provisions of section 1395e of this title, if the operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) of a hospital (other than a subsection (d) hospital, as defined in subsection (d)(1)(B) of this section) for a cost reporting period subject te this paragraph—

(A) are less than or equal to the target amount (as defined in parsgraph (3)) for that hospital for that period, the amount of the payment with respect to such operating costs payable under part A of this subchapter on a per discharge or per admission basis (as the case may be) shall be equal to the amount of such operating costs, plus—

(i) 50 percent of the amount by which the target amount exceeds the amount of the operating costs, or

(ii) 5 percent of the target amount,

whichever is less; or

(B) are greater than the target amount, the amount of the payment with respect to such operating costs payable under part A of this subchapter on a per discharge or per admission basis (as the case may be) shall be equal to (i) the target amount, plus (ii) in the case of cost reporting periods beginning on or after October 1, 1982, and before October 1, 1984, 25 percent of the amount by which the amount of the operating costs exceeds the target amount;

except that in no case may the amount payable under this subchapter (other than on the basis of a DRG prospective payment rate determined under subsection (d) of this section) with respect to operating costs of inpatient hospital services exceed the maximum amount payable with respect to such costs pursuant to subsection (a) of this section.

(2) Repealed. Pub. L. 98-21, title VI, § 601(b)(4), Apr. 20, 1983, 97 Stat. 150.

(3)(A) For purposes of this subsection, the term "target amount" means, with respect to a hospital for a particular 12-month cost reporting period—

[*See main edition for text of (i)*]

(ii) in the case of a later reporting period, the target amount for the preceding 12-month cost reporting period,

increased by the applicable percentage increase under subparagraph (B) for that particular cost reporting period.

(B)(i) For purposes of subparagraph (A) for 12-month cost reporting periods beginning during a fiscal year and for purposes of subsection (d) of this section for discharges occurring during a fiscal year, the "applicable percentage increase" shall be—

(I) for fiscal year 1986, ½ percent,

(II) for fiscal year 1987, 1.15 percent, and for fiscal year 1988, the market basket percentage increase (as defined in clause (ii)) minus 2.0 percentage points, and

(III) for fiscal year 1989 and subsequent fiscal years, the percentage determined by the Secretary pursuant to subsection (e)(4) of this section.

(ii) For purposes of clause (i), the term "market basket percentage increase" means, with respect to cost reporting periods and discharges occurring in a fiscal year, the percentage, estimated by the Secretary before the beginning of the period or fiscal year, by which the cost of the mix of goods and services (including personnel costs but excluding nonoperating costs) comprising routine, ancillary, and special care unit inpatient hospital services, based on an index of appropriately weighted indicators of changes in wages and prices which are representative of the mix of goods and services included in such inpatient hospital services, for the period or fiscal year will exceed the cost of such mix of goods and services for the preceding 12-month cost reporting period or fiscal year.

[*See main edition for text of (4) and (5)*]

(6) In the case of any hospital which becomes subject to the taxes under section 3111 of the Internal Revenue Code of 1986, with respect to any or all of its employees, for part or all of a cost reporting period, and was not subject to such taxes with respect to any or all of its employees for all or part of the 12-month base cost reporting period referred to in subsection (b)(3)(A)(i) of this section, the Secretary shall provide for an adjustment by increasing the base period amount deserlbed in such subsection for such hospital by an amount equal to the amount of such taxes which would have been paid or accrued by such hospital for such

[11] So in original. Probably should be followed by a comma.

base period if such hospital had been subject to such taxes for all of such base period with respect to all its employees, minus the amount of any such taxes actually paid or accrued for such base period.

(c) Payment in accordance with State hospital reimbursement control system; amount of payment; discontinuance of payments

(1) The Secretary may provide, in his discretion, that payment with respect to services provided by a hospital in a State may be made in accordance with a hospital reimbursement control system in a State, rather than in accordance with the other provisions of this title, if the chief executive officer of the State requests such treatment and if—

[See main edition for text of (A)]

(B) the Secretary has been provided satisfactory assurances as to the equitable treatment under the system of all entities (including Federal and State programs) that pay hospitals for inpatient hospital services, of hospital employees, and of hospital patients;

(C) the Secretary has been provided satisfactory assurances that under the system, over 36-month periods (the first such period beginning with the first month in which this subsection applies to that system in the State), the amount of payments made under this subchapter under such system will not exceed the amount of payments which would otherwise have been made under this subchapter not using such system;

(D) the Secretary determines that the system will not preclude an eligible organization (as defined in section 1395mm(b) of this title) from negotiating directly with hospitals with respect to the organization's rate of payment for inpatient hospital services; and

(E) the Secretary determines that the system requires hospitals to meet the requirement of section 1395ce(a)(1)(G) of this title and the system provides for the exclusion of certain costs in accordance with section 1395y(a)(14) of this title (except for such waivers thereof as the Secretary provides by regulation).

The Secretary cannot deny the application of a State under this subsection on the ground that the State's hospital reimbursement control system is based on a payment methodology other than on the basis of a diagnosis-related group or on the ground that the amount of payments made under this subchapter under such system must be less than the amount of payments which would otherwise have been made under this subchapter not using such system. If the Secretary determines that the conditions described in subparagraph (C) are based on maintaining payment amounts at no more than a specified percentage increase above the payment amounts in a base period, the State has the option of applying such test (for inpatient hospital services under part A of this subchapter) on an aggregate payment basis or on the basis of the amount of payment per inpatient discharge or admission. If the Secretary determines that the conditions described in subparagraph (C) are based on maintaining aggregate payment amounts below a national average percentage increase in total payments under part A of this subchapter for inpatient hospital services, the Secretary cannot deny the application of a State under this subsection on the ground that the State's rate of increase in such payments for such services must be less than such national average rate of increase.

[See main edition for text of (2)]

(3) The Secretary shall discontinue payments under a system described in paragraph (1) if the Secretary—

(A) determines that the system no longer meets the requirements of subparagraphs (A), (D), and (E) of paragraph (1) and, if applicable, the requirements of paragraph (5), or

(B) has reason to believe that the assurances described in subparagraph (B) or (C) of paragraph (1) (or, if applicable, in paragraph (5)) are not being (or will not be) met.

(4) The Secretary shall approve the request of a State under paragraph (1) with respect to a hospital reimbursement control system if—

(A) the requirements of subparagraphs (A), (B), (C), (D), and (E) of paragraph (1) have been met with respect to the system, and

(B) with respect to that system a waiver of certain requirements of this subchapter has been approved on or before (and which is in effect as of) April 20, 1983, pursuant to section 1395b-1(a) of this title or section 222(a) of the Social Security Amendments of 1972.

With respect to a State system described in this paragraph, the Secretary shall judge the effectiveness of such system on the basis of its rate of increase or inflation in inpatient hospital payments for individuals under this subchapter, as compared to the national rate of increase or inflation for such payments, with the State retaining the option to have the test applied on the basis of the aggregate payment or payments per inpatient admission or discharge during the three cost reporting periods beginning on or after October 1, 1983, after which such test, at the option of the Secretary, shall no longer apply, and such State systems shall be treated in the same manner as under other waivers.

(5) The Secretary shall approve the request of a State under paragraph (1) with respect to a hospital reimbursement control system if—

(A) the requirements of subparagraphs (A), (B), (C), (D), and (E) of paragraph (1) have been met with respect to the system;

(B) the Secretary determines that the system—

(i) is operated directly by the State or by an entity designated pursuant to State law,

(ii) provides for payment of hospitals covered under the system under a methodology (which sets forth exceptions and adjustments, as well as any method for changes in the methodology) by which rates or amounts to be paid for hospital services during a specified period are established under the system prior to the defined rate period, and

(iii) hospitals covered under the system will make such reports (in lieu of cost and other reports, identified by the Secretary, otherwise required under this subchapter) as the Secretary may require in order to properly monitor assurances provided under this subsection;

(C) the State has provided the Secretary with satisfactory assurances that operation of the system will not result in any change in hospital admission practices which result in—

(i) a significant reduction in the proportion of patients (receiving hospital services covered under the system) who have no third-party coverage and who are unable to pay for hospital services,

(ii) a significant reduction in the proportion of individuals admitted to hospitals for inpatient hospital services for which payment is (or is likely to be) less than the anticipated charges for or costs of such services,

(iii) the refusal to admit patients who would be expected to require unusually costly or prolonged treatment for reasons other than those related to the appropriateness of the care available at the hospital, or

(iv) the refusal to provide emergency services to any person who is in need of emergency services if the hospital provides such services;

(D) any change by the State in the system which has the effect of materially reducing payments to hospitals can only take effect upon 60 days notice to the Secretary and to the hospitals the payment to which is likely to be materially affected by the change; and

(E) the State has provided the Secretary with satisfactory assurances that in the development of the system the State has consulted with local governmental officials concerning the impact of the system on public hospitals.

The Secretary shall respond to requests of States under this paragraph within 60 days of the date the request is submitted to the Secretary.

(6) If the Secretary detormines that the assurances described in paragraph (1)(C) have not been met with respect to any 36-month period, the Secretary may reduce payments under this subchapter to hospitals under the system in an amount equal to the amount by which the payment under this subchapter under such system for such period exceeded the amount of payments which would otherwise have been made under this subchapter not using such system.

(7) In the case of a State which made a request under paragraph (5) before December 31, 1984, for the approval of a State hospital reimbursement control system and which request was approved—

(A) in applying paragraphs (1)(C) and (6), a reference to a "36-month period" is deemed a reference to a "48-month period", and

(B) in order to allow the State the opportunity to provide the assurances described in paragraph (1)(C) for a 48-month period, the Secretary may not discontinue payments under the system, under the authority of paragraph (3)(A) because the Secretary has reason to believe that such assurances are not being (or will not be) met, before July 1, 1986.

(d) Inpatient hospital service payments on basis of prospective rates

(1)(A) Notwithstanding section 1395f(b) of this title but subject to the provisions of section 1395e of this title, the amount of the payment with respect to the operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) of a subsection (d) hospital (as defined in subparagraph (B)) for inpatient hospital discharges in a cost reporting period or in a fiscal year—

(i) beginning on or after October 1, 1983, and before October 1, 1984, is equal to the sum of—

(I) the target percentage (as defined in subparagraph (C)) of the hospital's target amount for the cost reporting period (as defined in subsection (b)(3)(A) of this section, but determined without the application of subsection (a) of this section), and

(II) the DRG percentage (as defined in subparagraph (C)) of the regional adjusted DRG prospective payment rate determined under paragraph (2) for such discharges;

(ii) beginning on or after October 1, 1984, and before October 1, 1987, is equal to the sum of—

(I) the target percentage (as defined in subparagraph (C)) of the hospital's target amount for the cost reporting period (as defined in subsection (b)(3)(A) of this section, but determined without the application of subsection (a) of this section), and

(II) the DRG percentage (as defined in subparagraph (C)) of the applicable combined adjusted DRG prospective payment rate determined under subparagraph (D) for such discharges; or

(iii) beginning on or after October 1, 1987, is equal to the national adjusted DRG prospective payment rate determined under paragraph (3) for such discharges.

(B) As used in this section, the term "subsection (d) hospital" means a hospital located in one of the fifty States or the District of Columbia other than—

(i) a psychiatric hospital (as defined in section 1395x(f) of this title),

(ii) a rehabilitation hospital (as defined by the Secretary),

(iii) a hospital whose inpatients are predominantly individuals under 18 years of age, or

(iv) a hospital which has an average inpatient length of stay (as determined by the Secretary) of greater than 25 days;

and, in accordance with regulations of the Secretary, does not include a psychiatric or rehabilitation unit of the hospital which is a distinct part of the hospital (as defined by the Secretary).

(C) For purposes of this subsection, for cost reporting periods beginning—

(i) on or after October 1, 1983, and before October 1, 1984, the "target percentage" is 75

percent and the "DRG percentage" is 25 percent;

(ii) on or after October 1, 1984, and before October 1, 1985, the "target percentage" is 50 percent and the "DRG percentage" is 50 percent;

(iii) on or after October 1, 1985, and before October 1, 1986, the "target percentage" is 45 percent and the "DRG percentage" is 55 percent; and

(iv) on or after October 1, 1986, and before October 1, 1987, the "target percentage" is 25 percent and the "DRG percentage" is 75 percent.

(D) For purposes of subparagraph (A)(ii)(II), the "applicable combined adjusted DRG prospective payment rate" for discharges occurring—

(i) on or after October 1, 1984, and before October 1, 1986, is a combined rate consisting of 25 percent of the national adjusted DRG prospective payment rate, and 75 percent of the regional adjusted DRG prospective payment rate, determined under paragraph (3) for such discharges; and

(ii) on or after October 1, 1986, and before October 1, 1987, is a combined rate consisting of 50 percent of the national adjusted DRG prospective payment rate, and 50 percent of the regional adjusted DRG prospective payment rate, determined under paragraph (3) for such discharges.

(2) The Secretary shall determine a national adjusted DRG prospective payment rate, for each inpatient hospital discharge in fiscal year 1984 involving inpatient hospital services of a subsection (d) hospital in the United States, and shall determine a regional adjusted DRG prospective payment rate for such discharges in each region, for which payment may be made under part A of this subchapter. Each such rate shall be determined for hospitals located in urban or rural areas within the United States or within each such region, respectively, as follows:

(A) The Secretary shall determine the allowable operating costs per discharge of inpatient hospital services for the hospital for the most recent cost reporting period for which data are available.

(B) The Secretary shall update each amount determined under subparagraph (A) for fiscal year 1984 by—

(i) updating for fiscal year 1983 by the estimated average rate of change of hospital costs industry-wide between the cost reporting period used under such subparagraph and fiscal year 1983 and the most recent case-mix data available, and

(ii) projecting for fiscal year 1984 by the applicable percentage increase (as defined in subsection (b)(3)(B) of this section) for fiscal year 1984.

(C) The Secretary shall standardize the amount updated under subparagraph (B) for each hospital by—

(i) excluding an estimate of indirect medical education costs (taking into account, for discharges occurring after September 30, 1986, the amendments made by section 9104(a) of the Medicare and Medicaid Budget Reconciliation Amendments of 1985),

(ii) adjusting for variations among hospitals by area in the average hospital wage level,

(iii) adjusting for variations in case mix among hospitals, and

(iv) for discharges occurring on or after October 1, 1986, and before October 1, 1989, excluding an estimate of the additional payments to certain hospitals to be made under paragraph (5)(F).

(D) The Secretary shall compute an average of the standardized amounts determined under subparagraph (C) for the United States and for each region—

(i) for all subsection (d) hospitals located in an urban area within the United States or that region, respectively, and

(ii) for all subsection (d) hospitals located in a rural area within the United States or that region, respectively.

For purposes of this subsection, the term "region" means one of the nine census divisions, comprising the fifty States and the District of Columbia, established by the Bureau of the Census for statistical and reporting purposes; the term "urban area" means an area within a Metropolitan Statistical Area (as defined by the Office of Management and Budget) or within such similar area as the Secretary has recognized under subsection (a) of this section by regulation; and the term "rural area" means any area outside such an area or similar area. A hospital located in a Metropolitan Statistical Area shall be deemed to be located in the region in which the largest number of the hospitals in the same Metropolitan Statistical Area are located, or, at the option of the Secretary, the region in which the majority of the inpatient discharges (with respect to which payments are made under this subchapter) from hospitals in the same Metropolitan Statistical Area are made.

(E) The Secretary shall reduce each of the average standardized amounts determined under subparagraph (D) by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this subsection based on DRG prospective payment rates which are additional payments described in paragraph (5)(A) (relating to outlier payments).

(F) The Secretary shall adjust each of such average standardized amounts as may be required under subsection (e)(1)(B) of this section for that fiscal year.

(G) For each discharge classified within a diagnosis-related group, the Secretary shall establish a national DRG prospective payment rate and shall establish a regional DRG prospective payment rate for each region, each of which is equal—

(i) for hospitals located in an urban area in the United States or that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (D), reduced under subparagraph (E), and adjusted under subparagraph (F)) for hospitals located in an urban area in the United States or that region, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group; and

(ii) for hospitals located in a rural area in the United States or that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (D), reduced under subparagraph (E), and adjusted under subparagraph (F)) for hospitals located in a rural area in the United States or that region, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

(H) The Secretary shall adjust the proportion, (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the national and regional DRG prospective payment rates computed under subparagraph (G) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level.

(3) The Secretary shall determine a national adjusted DRG prospective payment rate, for each inpatient hospital discharge in a fiscal year after fiscal year 1984 involving inpatient hospital services of a subsection (d) hospital in the United States, and shall determine a regional adjusted DRG prospective payment rate for such discharges in each region for which payment may be made under part A of this subchapter. Each such rate shall be determined for hospitals located in urban or rural areas within the United States and within each such region, respectively, as follows:

(A) The Secretary shall compute an average standardized amount for hospitals located in an urban area and for hospitals located in a rural area within the United States and for hospitals located in an urban area and for hospitals located in a rural area within each region, equal to the respective average standardized amount computed for the previous fiscal year under paragraph (2)(D) or under this subparagraph, increased for each of fiscal years 1985, 1986, 1987, and 1988 by the applicable percentage increase under subsection (b)(3)(B) of this section, and adjusted for subsequent fiscal years in accordance with the final determination of the Secretary under subsection (e)(4) of this section, and adjusted to reflect the most recent case-mix data available. With respect to discharges occurring on or after October 1, 1987, the Secretary shall compute urban and rural averages on the basis of discharge weighting rather than hospital weighting, making appropriate adjustments to ensure that computation on such basis does not result in total payments under this section that are greater or less than the total payments that would have been made under this section but for this sentence, and making appropriate changes in the manner of determining the reductions under subparagraph (C)(ii).

(B) The Secretary shall reduce each of the average standardized amounts determined under subparagraph (A) for hospitals located in an urban area and for hospitals located in a rural area by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this subsection based on DRG prospective payment amounts which are additional payments described in paragraph (5)(A) (relating to outlier payments) for hospitals located in such respective area.

(C)(i) For discharges occurring in fiscal year 1985, the Secretary shall adjust each of such average standardized amounts as may be required under subsection (e)(1)(B) of this section for that fiscal year.

(ii) For discharges occurring after September 30, 1986, the Secretary shall further reduce each of the average standardized amounts (in a proportion which takes into account the differing effects of the standardization effected under paragraph (2)(C)(i)) so as to provide for a reduction in the total of the payments (attributable to this paragraph) made for discharges occurring—

(I) on or after October 1, 1986, and before October 1, 1989, of an amount equal to the estimated reduction in the payment amounts under paragraph (5)(B) that would have resulted from the enactment of the amendments made by section 9104 of the Medicare and Medicaid Budget Reconciliation Amendments of 1985 if the factor described in clause (ii)(II) of paragraph (5)(B) were applied for discharges occurring during such period instead of the factor described in clause (ii)(I) of that paragraph, and

(II) on or after October 1, 1989, of an amount equal to the estimated reduction in the payment amounts under paragraph (5)(B) for those discharges that has resulted from the enactment of the amendments made by section 9104 of the Medicare and Medicaid Budget Reconciliation Amendments of 1985.

(D) For each discharge classified within a diagnosis-related group, the Secretary shall establish for the fiscal year a national DRG prospective payment rate and shall establish a regional DRG prospective payment rate for each region, each of which is equal—

(i) for hospitals located in an urban area in the United States or that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (A), reduced under subparagraph (B), and adjusted or reduced under subparagraph (C)) for the fiscal year for hospitals located in an urban area in the United States or that region, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group; and

(ii) for hospitals located in a rural area in the United States or that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (A), reduced under subparagraph (B), and adjusted or reduced under subparagraph (C)) for the fiscal year for hospitals located in a rural area in the United States or that region, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

(E) The Secretary shall adjust the proportion, (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the DRG prospective payment rates computed under subparagraph (D) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level.

(4)(A) The Secretary shall establish a classification of inpatient hospital discharges by diagnosis-related groups and a methodology for classifying specific hospital discharges within these groups.

(B) For each such diagnosis-related group the Secretary shall assign an appropriate weighting factor which reflects the relative hospital resources used with respect to discharges classified within that group compared to discharges classified within other groups.

(C) The Secretary shall adjust the classifications and weighting factors established under subparagraphs (A) and (B), for discharges in fiscal year 1988 and at least annually thereafter, to reflect changes in treatment patterns, technology, and other factors which may change the relative use of hospital resources.

(D) The Commission (established under subsection (e)(2) of this section) shall consult with and make recommendations to the Secretary with respect to the need for adjustments under subparagraph (C), based upon its evaluation of scientific evidence with respect to new practices, including the use of new technologies and treatment modalities. The Commission shall report to the Congress with respect to its evaluation of any adjustments made by the Secretary under subparagraph (C).

(5)(A)(i) The Secretary shall provide for an additional payment for a subsection (d) hospital for any discharge in a diagnosis-related group, the length of stay of which exceeds the mean length of stay for discharges within that group by a fixed number of days, or exceeds such mean length of stay by some fixed number of standard deviations, whichever is the fewer number of days.

(ii) For cases which are not included in clause (i), a subsection (d) hospital may request additional payments in any case where charges, adjusted to cost, exceed a fixed multiple of the applicable DRG prospective payment rate, or exceed such other fixed dollar amount, whichever is greater.

(iii) The amount of such additional payment under clauses (i) and (ii) shall be determined by the Secretary and shall approximate the marginal cost of care beyond the cutoff point applicable under clause (i) or (ii).

(iv) The total amount of the additional payments made under this subparagraph for discharges in a fiscal year may not be less than 5 percent nor more than 6 percent of the total payments projected or estimated to be made based on DRG prospective payment rates for discharges in that year.

(B) The Secretary shall provide for an additional payment amount for subsection (d) hospitals with indirect costs of medical education, in an amount computed in the same manner as the adjustment for such costs under regulations (in effect as of January 1, 1983) under subsection (a)(2) of this section, except as follows:

(i) The amount of such additional payment shall be determined by multiplying (I) the sum of the amount determined under paragraph (1)(A)(ii)(II) (or, if applicable, the amount determined under paragraph (1)(A)(iii)) and the amount paid to the hospital under subparagraph (A), by (II) the indirect teaching adjustment factor described in clause (ii).

(ii) For purposes of clause (i)(II), the indirect teaching adjustment factor for discharges occurring—

(I) on or after May 1, 1986, and before October 1, 1989, is equal to $2\times((1+r)^{.405}-1)$, or

(II) on or after October 1, 1989, is equal to $1.5\times((1+r)^{.5795}-1)$,

where "r" is the ratio of the hospital's full-time equivalent interns and residents to beds.

(iii) In determining such adjustment the Secretary shall not distinguish between those interns and residents who are employees of a hospital and those interns and residents who furnish services to a hospital but are not employees of such hospital.

(iv) In determining such adjustment, the Secretary shall continue to count interns and residents assigned to outpatient services of the hospital as part of the calculation of the full-time-equivalent number of interns and residents.

(C)(i)(I) The Secretary shall provide for such exceptions and adjustments to the payment amounts established under this subsection (other than under paragraph (9)) as the Secretary deems appropriate to take into account the special needs of regional and national referral centers (including those hospitals of 500 or more beds located in rural areas). A hospital which is classified as a rural hospital may appeal to the Secretary to be classified as a rural referral center under this clause on the basis of criteria (established by the Secretary) which shall allow the hospital to demonstrate that it should be so reclassified by reason of certain of its operating characteristics being similar to those of a typical urban hospital located in the same census region and which shall not require a rural osteopathic hospital to have

more than 3,000 discharges in a year in order to be classified as a rural referral center. Such characteristics may include wages, scope of services, service area, and the mix of medical specialties. The Secretary shall publish the criteria not later than August 17, 1984, for implementation by October 1, 1984. An appeal allowed under this clause must be submitted to the Secretary (in such form and manner as the Secretary may prescribe) during the quarter before the first quarter of the hospital's cost reporting period (or, in the case of a cost reporting period beginning during October 1984, during the first quarter of that period), and the Secretary must make a final determination with respect to such appeal within 60 days after the date the appeal was submitted. Any payment adjustments necessitated by a reclassification based upon the appeal shall be effective at the beginning of such cost reporting period.

(II) The Secretary shall provide, under subclause (I), for the classification of a rural hospital as a regional referral center if the hospital has a case mix equal to or greater than the median case mix for hospitals (other than hospitals with approved teaching programs) located in an urban area in the same region (as defined in paragraph (2)(D)), has at least 5,000 discharges a year or, if less, the median number of discharges in urban hospitals in the region in which the hospital is located (or, in the case of a rural osteopathic hospital, meets the criterion established by the Secretary under subclause (I) with respect to the annual number of discharges for such hospitals), and meets any other criteria established by the Secretary under subclause (I).

(ii) With respect to a subsection (d) hospital which is a "sole community hospital", payment under paragraph (1)(A) for any cost reporting period or fiscal year beginning on or after October 1, 1984, shall be determined under the formula provided in clause (i) of that paragraph with the target and DRG percentages determined under paragraph (1)(C)(i) (except that any reference to paragraph (2) shall be deemed, for this purpose, a reference to paragraph (3)). In the case of a sole community hospital that experiences, in a cost reporting period (beginning on or after October 1, 1983, and before October 1, 1988) compared to the previous cost reporting period, a decrease of more than 5 percent in its total number of inpatient cases due to circumstances beyond its control, the Secretary shall provide for such adjustment to the payment amounts under this subsection (other than under paragraph (9)) as may be necessary to fully compensate the hospital for the fixed costs it incurs in the period in providing inpatient hospital services, including the reasonable cost of maintaining necessary core staff and services. In the case of a sole community hospital which experiences, in any cost reporting period after the cost reporting period which was used as the base for determining the target amount for payments to such hospital under paragraph (1)(A)(i)(I), a significant increase in operating costs attributable to the addition of new inpatient facilities or services at such hospital (including the opening of a special care unit), the Secretary shall provide for such adjustment to the payment amounts under this subsection (other than under paragraph (9)) for such cost reporting period and subsequent cost reporting periods as may be necessary to reasonably compensate such hospital for such increased costs. For purposes of this subparagraph, the term "sole community hospital" means a hospital that, by reason of factors such as isolated location, weather conditions, travel conditions, or absence of other hospitals (as determined by the Secretary), is the sole source of inpatient hospital services reasonably available to individuals in a geographical area who are entitled to benefits under part A of this subchapter.

(iii) The Secretary shall provide by regulation for such other exceptions and adjustments to such payment amounts under this subsection as the Secretary deems appropriate (including exceptions and adjustments that may be appropriate with respect to hospitals involved extensively in treatment for and research on cancer).

(iv) The Secretary may provide for such adjustments to the payment amounts under this subsection as the Secretary deems appropriate to take into account the unique circumstances of hospitals located in Alaska and Hawaii.

(D)(i) The Secretary shall estimate the amount of reimbursement made for services described in section 1395y(a)(14) of this title with respect to which payment was made under part B of this subchapter in the base reporting periods referred to in paragraph (2)(A) and with respect to which payment is no longer being made.

(ii) The Secretary shall provide for an adjustment to the payment for subsection (d) hospitals in each fiscal year so as appropriately to reflect the net amount described in clause (i).

(E) Repealed. Pub. L. 99-509, title IX, § 9320(g)(2), Oct. 21, 1986, 100 Stat. 2015.

(F)(i) For discharges occurring on or after May 1, 1986, and before October 1, 1989, the Secretary shall provide, in accordance with this subparagraph, for an additional payment amount for each subsection (d) hospital which—

(I) serves a significantly disproportionate number of low-income patients (as defined in clause (v)), or

(II) is located in an urban area, has 100 or more beds, and can demonstrate that its net inpatient care revenues (excluding any of such revenues attributable to this subchapter or State plans approved under subchapter XIX of this chapter), during the cost reporting period in which the discharges occur, for indigent care from State and local government sources exceed 30 percent of its total of such revenues during the period.

(ii) The amount of such payment for each discharge shall be determined by multiplying (I) the sum of the amount determined under paragraph (1)(A)(ii)(II) (or, if applicable, the amount determined under paragraph (1)(A)(iii)) and the amount paid to the hospital under subparagraph (A) for that discharge, by (II) the disproportionate share adjustment percentage established under clause (iii) or (iv) for

the cost reporting period in which the discharge occurs.

(iii) The disproportionate share adjustment percentage for a cost reporting period for a hospital described in clause (i)(II) is equal to 15 percent.

(iv) The disproportionate share adjustment percentage for a cost reporting period for a hospital that is not described in clause (i)(II) and that—

(I) is located in an urban area and has 100 or more beds or is described in the second sentence of subclause (III), is equal to the lesser of 15 percent, or the percent determined in accordance with the following formula: $(P-15)(.5)+2.5$, where "P" is the hospital's disproportionate patient percentage (as defined in clause (vi));

(II) is located in an urban area and has less than 100 beds, is equal to 5 percent; or

(III) is located in a rural area and is not described in the second sentence of clause (v), is equal to 4 percent.

(v) In this subparagraph, a hospital "serves a significantly disproportionate number of low income patients" for a cost reporting period if the hospital has a disproportionato patient percentage (as defined in clause (vi)) for that period which equals, or exceeds—

(I) 15 percent, if the hospital is located in an urban area and has 100 or more beds,

(II) 40 percent, if the hospital is located in an urban area and has less than 100 beds, or

(III) 45 percent, if the hospital is located in a rural area.

A hospital located in a rural area and with 500 or more beds also "serves a significantly disproportionate number of low income patients" for a cost reporting period if the hospital has a disproportionate patient percentage (as defined in clause (vi)) for that period which equals or exceeds a percentage specified by the Secretary.

(vi) In this subparagraph, the term "disproportionate patient percentage" means, with respect to a cost reporting period of a hospital, the sum of—

(I) the fraction (expressed as a percentage), the numerator of which is the number of such hospital's patient days for such period which were made up of patients who (for such days) were entitled to benefits under part A of this subchapter and were entitled to supplemental security income benefits (excluding any State supplementation) under subchapter XVI of this chapter, and the denominator of which is the number of such hospital's patient days for such period which were made up of patients who (for such days) were entitled te benefits under part A of this subchapter, and

(II) the fraction (expressed as a percentage), the numerator of which is the number of the hospital's patient days for such period which consist of patients who (for such days) were eligible for medical assistance under a State plan approved under subchapter XIX of this chapter, but who were not entitled to benefits under part A of this subchapter, and the denominator of which is the total number of the hospital's patient days for such period.

(6) The Secretary shall provide for publication in the Federal Register, on or before the September 1 before each fiscal year (beginning with fiscal year 1984), of a description of the methodology and data used in computing the adjusted DRG prospective payment rates under this subsection, including any adjustments required under subsection (e)(1)(B) of this section.

(7) There shall be no administrative or judicial review under section 1395oo of this title or otherwise of—

(A) the determination of the requirement, or the proportional amount, of any adjustment effected pursuant to subsection (e)(1) of this section, and

(B) the establishment of diagnosis-related groups, of the methodology for the classification of discharges with such groups, and of the appropriate weighting factors thereof under paragraph (4).

(8) In the case of any hospital which is located in an area which is, at any time after April 20, 1983, reclassified from an urban to a rural area, payments to such hospital for the first two cost reporting periods for which such reclassification is effective shall be made as follows:

(A) For the first such cost reporting period, payment shall be equal to the amount payable to such hospital for such reporting period on the basis of the rural classification, plus an amount equal te two-thirds of the amount (if any) by which—

(i) the amount which would have been payable to such hospital for such reporting period on the basis of an urban classification, exceeds

(ii) the amount payable to such hospital for such reporting period on the basis of the rural classification.

(B) For the second such cost reporting period, payment shall be equal to the amount payable to such hospital for such reporting period on the basis of the rural classification, plus an amount equal to one-third of the amount (if any) by which—

(i) the amount which would have been payable to such hospital for such reporting period on the basis of an urban classification, exceeds

(ii) the amount payable to such hospital for such reporting period on the basis of the rural classification.

(9)(A) Notwithstanding section 1395f(b) of this title but subject to the provisions of section 1395e of this title, the amount of the payment with respect to the operating costs of inpatient hospital services of a subsection (d) Puerto Rico hospital for inpatient hospital discharges in a fiscal year beginning on or after October 1, 1987, is equal to the sum of—

(i) 75 percent of the Puerto Rico adjnsted DRG prospective payment rate (determined under subparagraph (B) or (C)) for such discharges, and

(ii) 25 percent of the discharge-weighted average of—

(I) the national adjusted DRG prospective payment rate (determined under paragraph (3)(D)) for hospitals located in an urban area, and

(II) such rate for hospitals located in a rural area,

for such discharges, adjusted in the manner provided in paragraph (3)(E) for different area wage levels. As used in this section, the term "subsection (d) Puerto Rico hospital" means a hospital that is located in Puerto Rico and that would be a subsection (d) hospital (as defined in paragraph (1)(B)) if it were located in one of the fifty States.

(B) The Secretary shall determine a Puerto Rico adjusted DRG prospective payment rate, for each inpatient hospital discharge in fiscal year 1988 involving inpatient hospital services of a subsection (d) Puerto Rico hospital for which payment may be made under part A of this subchapter. Such rate shall be determined for such hospitals located in urban or rural areas within Puerto Rico, as follows:

(i) The Secretary shall determine the target amount (as defined in subsection (b)(3)(A) of this section) for the hospital for the cost reporting period beginning in fiscal year 1987 and increase such amount by prorating the applicable percentage increase (as defined in subsection (b)(3)(B) of this section) to update the amount to the midpoint in fiscal year 1988.

(ii) The Secretary shall standardize the amount determined under clause (i) for each hospital by—

(I) excluding an estimate of indirect medical education costs,

(II) adjusting for variations among hospitals by area in the average hospital wage level,

(III) adjusting for variations in case mix among hospitals, and

(IV) excluding an estimate of the additional payments to certain subsection (d) Puerto Rico hospitals to be made under subparagraph (D)(v) (relating to disproportionate share payments).

(iii) The Secretary shall compute a discharge weighted average of the standardized amounts determined under clause (ii) for all hospitals located in an urban area and for all hospitals located in a rural area (as such terms are defined in paragraph (2)(D)).

(iv) The Secretary shall reduce the average standardized amount by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this paragraph which are additional payments described in subparagraph (D)(i) (relating to outlier payments).

(v) For each discharge classified within a diagnosis-related group for hospitals located in an urban or rural area, respectively, the Secretary shall establish a Puerto Rico DRG prospective payment rate equal to the product of—

(I) the average standardized amount (computed under clause (iii) and reduced under clause (iv)) for hospitals located in an urban or rural area, respectively, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

(vi) The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the Puerto Rico DRG prospective payment rate computed under clause (v) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the Puerto Rican average hospital wage level.

(C) The Secretary shall determine a Puerto Rico adjusted DRG prospective payment rate, for each inpatient hospital discharge after fiscal year 1988 involving inpatient hospital services of a subsection (d) Puerto Rico hospital for which payment may be made under part A of this subchapter. Such rate shall be determined for hospitals located in urban or rural areas within Puerto Rico as follows:

(i) The Secretary shall compute an average standardized amount for hospitals located in an urban area and for hospitals located in a rural area equal to the respective average standardized amount computed for the previous fiscal year under subparagraph (B)(iii) or under this clause, increased for fiscal year 1989 by the applicable percentage increase under subsection (b)(3)(B) of this section, and adjusted for subsequent fiscal years in accordance with the final determination of the Secretary under subsection (e)(4) of this section, and adjusted to reflect the most recent case-mix data available.

(ii) The Secretary shall reduce each of the average standardized amounts by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this paragraph which are additional payments described in subparagraph (D)(i) (relating to outlier payments).

(iii) For each discharge classified within a diagnosis-related group for hospitals located in an urban or rural area, respectively, the Secretary shall establish a Puerto Rico DRG prospective payment rate equal to the product of—

(I) the average standardized amount (computed under clause (i) and reduced under clause (ii)) for hospitals located in an urban or rural area, respectively, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

(iv) The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the Puerto Rico DRG prospective payment rate computed under clause (iii) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the Puerto Rico average hospital wage level.

(D) The following provisions of paragraph (5) shall apply to subsection (d) Puerto Rico hospitals receiving payment under this paragraph in the same manner and to the extent as they apply te subsection (d) hospitals receiving payment under this subsection:

(i) Subparagraph (A) (relating to outlier payments).

(ii) Subparagraph (B) (relating to payments for indirect medical education costs), except that for this purpose the sum of the amount detormined under subparagraph (A) of this paragraph and the amount pald to the hospital under clause (i) of this subparagraph shall be substituted for the sum referred to in paragraph (5)(B)(i)(I).

(iii) Subparagraph (C)(iii) (relating to exceptions and adjustments).

(iv) Subparagraph (E) (relating to payments for costs of certified registered nurse anesthetists).

(v) Subparagraph (F) (relating to disproportionate share payments), except that for this purpose the sum described in clause (ii) of this subparagraph shall be substituted for the sum referred to in paragraph (5)(F)(ii)(1).

(e) Proportional adjustments in applicable percentage increases; Prospective Payment Assessment Commission

(1)(A) For cost reporting periods of hospitals beginning in fiscal year 1984 or fiscal year 1985, the Secretary shall provide for such proportional adjustment in the applicable percentage increase (otherwise applicable to the periods under subsection (b)(3)(B) of this section) as may be necessary to assure that—

(i) the aggregate payment amounts otherwise provided under subsection (d)(1)(A)(i)(I) of this section for that fiscal year for operating costs of inpatient hospital services of hospitals (excluding payments made under section 1395cc(a)(1)(F) of this title),

are not greater or less than—

(ii) the target percentage (as defined in subsection (d)(1)(C) of this section) of the payment amounts which would have been payable for such services for those same hospitals for that fiscal year under this section under the law as in effect before April 20, 1983 (excluding payments made under section 1395cc(a)(1)(F) of this title);

except that the adjustment made under this subparagraph shall apply only to subsection (d) hospitals and shall not apply for purposes of making computations under subsection (d)(2)(B)(ii) of this section or subsection (d)(3)(A) of this section.

(B) For discharges occurring in fiscal year 1984 or fiscal year 1985, the Secretary shall provide under subsections (d)(2)(F) and (d)(3)(C) of this section for such equal proportional adjustment in each of the average standardized amounts otherwise computed for that fiscal year as may be necessary to assure that—

(i) the aggregate payment amounts otherwise provided under subsection (d)(1)(A)(i)(II) and (d)(5) of this seetion for that fiscal year for operating costs of inpatient hospital services of hospitals (excluding payments made under section 1395cc(a)(1)(F) of this title),

are not greater or less than—

(ii) the DRG percentage (as defined in subsection (d)(1)(C) of this section) of the payment amounts which would have been payable for such services for those same hospitals for that fiscal year under this section under the law as in effect before April 20, 1983 (excluding payments made under section 1395cc(a)(1)(F) of this title).

(C) For discharges occurring in fiscal year 1988, the Secretary shall provide for such equal proportional adjustment in each of the average standardized amounts otherwise computed under subsection (d)(3) of this section for that fiscal year as may be necessary to assure that—

(i) the aggregate payment amounts otherwise provided under subsections (d)(1)(A)(iii), (d)(5), and (d)(9) of this section for that fiscal year for operating costs of inpatient hospital services of subsection (d) hospitals and subsection (d) Puerto Rico hospitals,

are not greater or less than—

(ii) the payment amounts that would have been payable for such serviees for those same hospitals for that fiscal year but for the enactment of the amendments made by section 9304 of the Omnibus Budget Reconciliation Act of 1986.

(2) The Director of the Congressional Office of Technology Assessment (hereinafter in this subsection referred to as the "Director" and the "Offiee", respectively) shall provide for appointment of a Prospective Payment Assessment Commission (hereinafter in this subsection referred to as the "Commission"), to be composed of independent experts appointed by the Director (without regard to the provisions of title 5 governing appointments in the competitive service). In addition to carrying out its functions under subsection (d)(4)(D) of this section, the Commission shall review the applicable percentage increase factor described in subsection (b)(3)(B) of this section and make recommendations to the Secretary on the appropriate percentage change which should be effected for hospital inpatient discharges under subsections (b) and (d) of this section for fiscal years beginning with fiscal year 1986. In making its recommendations, the Commission shall take into account changes in the hospital market-basket described in subsection (b)(3)(B) of this seetion, hospital productivity, technological and scientifie advances, the quality of health care provided in hospitals (including the quallty and skill level of professional nursing required to maintain quallty care), and long-term cost-effectiveness in the provision of inpatient hospital services.

(3)(A) The Commission, not later than the April 1 before the beginning of each fiscal year (beginning with fiscal year 1986), shall report its recommendations to the Secretary on an appropriate ehange factor which should be used for inpatient hospital services for discharges in that fiscal year.

(B) The Secretary, not later than April 1, 1987, for fiscal year 1988 and not later than March 1 before the beginning of each fiscal year (beginning with fiscal year 1989), shall report to the Congress the Secretary's initial estimate of the percentage change that the Secretary will recommend or determine under paragraph (4) with respect to that fiscal year.

(4) Taking into consideration the recommendations of the Commission, the Secretary shall recommend for fiscal year 1988 an appropriate change factor for inpatient hospital services for discharges in that fiscal year and shall determine for each subsequent fiscal year the percentage change which will apply for purposes of this section as the applicable percentage increase (otherwise described in subsection (b)(3)(B) of this section) for discharges in that fiscal year, and which will take into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. The percentage change shall be the same for all subsection (d) hospitals and subsection (d) Puerto Rico hospitals, but may be different from that for other hospitals (and units not included as such hospitals) and may vary among such other hospitals and units.

(5) The Secretary shall cause to have published in the Federal Register, not later than—

(A) the June 1 before each fiscal year (beginning with fiscal year 1986), the Secretary's proposed recommendation or determination under paragraph (4) for that fiscal year for public comment, and

(B) the September 1 before such fiscal year after such consideration of public comment on the proposal as is feasible in the time available, the Secretary's final recommendation or determination under such paragraph for that year.

The Secretary shall include in the publication referred to in subparagraph (A) for a fiscal year the report of the Commission's recommendations submitted under paragraph (3) for that fiscal year.

(6)(A) The Commission shall consist of 17 individuals. Members of the Commission shall first be appointed no later than April 1, 1984, for a term of three years, except that the Director may provide initially for such shorter terms as will insure that (on a continuing basis) the terms of no more than seven members expire in any one year.

(B) The membership of the Commission shall provide expertise and experience in the provision and financing of health care, including physicians and registered professional nurses, employers, third party payors, individuals skilled in the conduct and interpretation of biomedical, health services, and health economics research, and individuals having expertise in the research and development of technological and scientific advances in health care. The Directer shall seek nominations from a wide range of groups, including—

(i) national organizations representing physicians, including medical specialty organizations and registered professional nurses and other skilled health professionals;

(ii) national organizations representing hospitals, including teaching hospitals;

(iii) national organizations representing manufacturers of health care products; and

(iv) national organizations representing the business community, health benefit programs, labor, and the elderly.

(C) Subject to such review as the Office deems necessary to assure the efficient administration of the Commission, the Commission may—

(i) employ and fix the compensation of an Executive Director (subject to the approval of the Director of the Office) and such other personnel (not to exceed 25) as may be necessary to carry out its duties (without regard to the provisions of title 5 governing appointments in the competitive service);

(ii) seek such assistance and support as may be required in the performance of its duties from appropriate Federal departments and agencies;

(iii) enter into contracts or make other arrangements, as may be necessary for the conduct of the work of the Commission (without regard to section 5 of title 41);

(iv) make advance, progress, and other payments which relate to the work of the Commission;

(v) provide transportation and subsistence for persons serving without compensation; and

(vi) prescribe such rules and regulations as it deems necessary with respect to the internal organization and operation of the Commission.

Section 10(a)(1) of the Federal Advisory Committee Act shall not apply to any portion of a Commission meeting if the Commission, by majority vote, determines that such portion of such meeting should be closed.

(D) While serving on the business of the Commission (including traveltime), a member of the Commission shall be entitled to compensation at the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5; and while so serving away from home and his regular place of business, a member may be allowed travel expenses, as authorized by the Chairman of the Commission. Physicians serving as persounel of the Commission may be provided a physician comparability allowance by the Commission in the same manner as Government physicians may be provided such an allowance by an agency under section 5948 of title 5, and for such purpose subsection (i) of such section shall apply to the Commission in the same manner as it applies to the Tennessee Valley Authority.

(E) In order to identify medically appropriate patterns of health resources use in accordance with paragraph (2), the Commission shall collect and assess information on medical and surgical procedures and services, including information on regional variations of medical practice and lengths of hospitalization and on other patient-care data, giving special attention to treatment patterns for conditions which appear

to involve excessively costly or inappropriate services not adding to the quality of care provided. In order to assess the safety, efficacy, and cost-effectiveness of new and existing medical and surgical procedures, the Commission shall, in coordination to the extent possible with the Secretary, collect and assess factual information, giving special attention to the needs of updating existing diagnosis-related groups, establishing new diagnosis-related groups, and making recommendations on relative weighting factors for such groups to reflect appropriate differences in resource consumption in delivering safe, efficacious, and cost-effective care. In collecting and assessing information, the Commission shall—

(i) utilize existing information, both published and unpublished, where possible, collected and assessed either by its own staff or under other arrangements made in accordance with this paragraph;

(ii) carry out, or award grants or contracts for, original research and experimentation, including clinical research, where existing information is inadequate for the development of useful and valid guidelines by the Commission; and

(iii) adopt procedures allowing any interested party to submit information with respect to medical and surgical procedures and services (including new practices, such as the use of new technologies and treatment modalities), which information the Commission shall consider in making reports and recommendations to the Secretary and Congress.

(F) The Commission shall have access to such relevant information and data as may be available from appropriate Federal agencies and shall assure that its activities, especially the conduct of original research and medical studies, are coordinated with the activities of Federal agencies.

(G)(i) The Office shall report annually to the Congress on the functioning and progress of the Commission and on the status of the assessment of medical procedures and services by the Commission.

(ii) The Office shall have unrestricted access to all deliberations, records, and data of the Commission, immediately upon its request.

(iii) In order to carry out its duties under this paragraph, the Office is authorized to expend reasonable and neccessary [12] funds as mutually agreed upon by the Office and the Commission. The Office shall be reimbursed for such funds by the Commission from the appropriations made with respect to the Commission.

(H) The Commission shall be subject to periodic audit by the General Accounting Office.

(I)(i) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this paragraph.

(ii) Eighty-five percent of such appropriation shall be payable from the Federal Hospital Insurance Trust Fund, and 15 percent of such appropriation shall be payable from the Federal Supplementary Medical Insurance Trust Fund.

(J) The Commission shall submit requests for appropriations in the same manner as the Office submits requests for appropriations, but amounts appropriated for the Commission shall be separate from amounts appropriated for the Office.

(f) Reporting of costs of hospitals receiving payments on basis of prospective rates

(1) The Secretary shall maintain, for a period ending not earlier than September 30, 1988, a system for the reporting of costs of hospitals receiving payments computed under subsection (d) of this section.

(2) If the Secretary determines, based upon information supplied by a utilization and quality control peer review organization under part B of subchapter XI of this chapter, that a hospital, in order to circumvent the payment method established under subsection (b) or (d) of this section, has taken an action that results in the admission of individuals entitled to benefits under part A unnecessarily, unnecessary multiple admissions of the same such individuals, or other inappropriate medical or other practices with respect to such individuals, the Secretary may—

(A) deny payment (in whole or in part) under part A of this subchapter with respect to inpatient hospital services provided with respect to such an unnecessary admission (or subsequent admission of the same individual), or

(B) require the hospital to take other corrective action necessary to prevent or correct the inappropriate practice.

(3) The provisions of paragraphs (2), (3), and (4) of section 1395y(d) of this title shall apply to determinations under paragraph (2) of this subsection in the same manner as they apply to determinations made under section 1395y(d)(1) of this title.

(g) State approval of capital expenditures; return on equity capital for hospitals

(1) If the Congress does not enact legislation, after April 20, 1983, and before October 1, 1987, respecting the payment under this subchapter for capital-related costs for inpatient hospital services, no payment may be made under this subchapter for capital-related costs of capital expenditures (as defined in section 1320a-1(g) of this title and except as provided in section 1320a-1(j) of this title) for inpatient hospital services in a State, which expenditures are obligated after September 30, 1987, unless the State has an agreement with the Secretary under section 1320a-1(b) of this title and under the agreement the State has recommended approval of the capital expenditures.

(2)(A) The Secretary shall provide that the amount which is allowable, with respect to reasonable costs of inpatient hospital services for which payment may be made under this subchapter, for a return on equity capital for hospitals shall, for cost reporting periods beginning on or after April 20, 1983, be equal to amounts otherwise allowable under regulations in effect on March 1, 1983, except that the rate of return to be recognized shall be equal to the applicable percentage (described in subparagraph (B)) of the average of the rates of inter-

[12] So in original.

est, for each of the months any part of which is included in the reporting period, on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.

(B) In this paragraph, the "applicable percentage" is—

(i) 75 percent, for cost reporting periods beginning during fiscal year 1987,

(ii) 50 percent, for cost reporting periods beginning during fiscal year 1988,

(iii) 25 percent, for cost reporting periods beginning during fiscal year 1989, and

(iv) 0 percent, for cost reporting periods beginning on or after October 1, 1989.

(3)(A) Except as provided in subparagraph (B), in determining the amount of the payments that may be made under this subchapter with respect to all the capital-related costs of inpatient hospital services of a subsection (d) hospital and a subsection (d) Puerto Rico hospital, the Secretary shall reduce the amounts of such payments otherwise established under this subchapter by—

(i) 3.5 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1987,

(ii) 7 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during fiscal year 1988, and

(iii) 10 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during fiscal year 1989.

(B) Subparagraph (A) shall not apply to payments with respect to the capital-related costs of any hospital that is a sole community hospital (as defined in subsection (d)(5)(C)(ii) of this section).

(C) If the Secretary provides, under subsection (a)(4) of this section, for the inclusion of other capital-related costs in operating costs of inpatient hospital services, the Secretary shall provide—

(i) notwithstanding any other provision of this subchapter, for the continuation of payment under the reasonable cost methodology described in section 1395x(v)(1) of this title with respect to capital-related costs of any hospital that is such a sole community hospital for cost reporting periods beginning before October 1, 1990, and

(ii) in the design of such payment system that the aggregate payment amounts under this subchapter for such other capital-related costs for payments attributable to portions of cost reporting periods occurring during fiscal year 1988 and fiscal year 1989 shall approximate the aggregate payment amount under this subchapter that would have been made (taking into account the provisions of subparagraphs (A) and (B)) during that fiscal year but for the inclusion of such costs by the Secretary.

(h) Payments for direct graduate medical education costs

(1) Substitution of special payment rules

Notwithstanding section 1395x(v) of this title, instead of any amounts that are otherwise payable under this subchapter with respect to the reasonable costs of hospitals for direct graduate medical education costs, the Secretary shall provide for payments for such costs in accordance with paragraph (3) of this subsection. In providing for such payments, the Secretary shall provide for an allocation of such payments between part A and part B of this subchapter (and the trust funds established under the respective parts) as reasonably reflects the proportion of direct graduate medical education costs of hospitals associated with the provision of services under each respective part.

(2) Determination of hospital-specific approved FTE resident amounts

The Secretary shall determine, for each hospital with an approved medical residency training program, an approved FTE resident amount for each cost reporting period beginning on or after July 1, 1985, as follows:

(A) Determining allowable average cost per FTE resident in a hospital's base period

The Secretary shall determine, for the hospital's cost reporting period that began during fiscal year 1984, the average amount recognized as reasonable under this subchapter for direct graduate medical education costs of the hospital for each full-time-equivalent resident.

(B) Updating to the first cost reporting period

(i) In general

The Secretary shall update each average amount determined under subparagraph (A) by the percentage increase in the consumer price index during the 12-month cost reporting period described in such subparagraph.

(ii) Exception

The Secretary shall not perform an update under clause (i) in the case of a hospital if the hospital's reporting period, described in subparagraph (A), began on or after July 1, 1984, and before October 1, 1984.

(C) Amount for first cost reporting period

For the first cost reporting period of the hospital beginning on or after July 1, 1985, the approved FTE resident amount for the hospital is equal to the amount determined under subparagraph (B) increased by 1 percent.

(D) Amount for subsequent cost reporting periods

For each subsequent cost reporting period, the approved FTE resident amount for the hospital is equal to the amount determined under this paragraph for the previous cost reporting period updated, through the midpoint of the period, by projecting the estimated percentage change in the consumer price index during the 12-month period ending at that midpoint, with appropriate adjustments to reflect previous under- or over-estimations under this sub-

paragraph in the projected percentage change in the consumer price index.

(E) Treatment of certain hospitals

In the case of a hospital that did not have an approved medical residency training program or was not participating in the program under this subchapter for a cost reporting period beginning during fiscal year 1984, the Secretary shall, for the first such period for which it has such a residency training program and is participating under this subchapter, provide for such approved FTE resident amount as the Secretary determines to be appropriate, based on approved FTE resident amounts for comparable programs.

(3) Hospital payment amount per resident

(A) In general

The payment amount, for a hospital cost reporting period beginning on or after July 1, 1985, is equal to the product of—

(i) the aggregate approved amount (as defined in subparagraph (B)) for that period, and

(ii) the hospital's medicare patient load (as defined in subparagraph (C)) for that period.

(B) Aggregate approved amount

As used in subparagraph (A), the term "aggregate approved amount" means, for a hospital cost reporting period, the product of—

(i) the hospital's approved FTE resident amount (determined under paragraph (2)) for that period, and

(ii) the weighted average number of full-time-equivalent residents (as determined under paragraph (4)) in the hospital's approved medical residency training programs in that period.

(C) Medicare patient load

As used in subparagraph (A), the term "medicare patient load" means, with respect to a hospital's cost reporting period, the fraction of the total number of inpatient-bed-days (as established by the Secretary) during the period which are attributable to patients with respect to whom payment may be made under part A of this subchapter.

(4) Determination of full-time-equivalent residents

(A) Rules

The Secretary shall establish rules consistent with this paragraph for the computation of the number of full-time-equivalent residents in an approved medical residency training program.

(B) Adjustment for part-year or part-time residents

Such rules shall take into account individuals who serve as residents for only a portion of a period with a hospital or simultaneously with more than one hospital.

(C) Weighting factors for certain residents

Subject to subparagraph (E), such rules shall provide, in calculating the number of full-time-equivalent residents in an approved residency program—

(i) before July 1, 1986, for each resident the weighting factor is 1.00,

(ii) on or after July 1, 1986, for a resident who is in the resident's initial residency period (as defined in paragraph (5)(F)), the weighting factor is 1.00,

(iii) on or after July 1, 1986, and before July 1, 1987, for a resident who is not in the resident's initial residency period (as defined in paragraph (5)(F)), the weighting factor is .75, and

(iv) on or after July 1, 1987, for a resident who is not in the resident's initial residency period (as defined in paragraph (5)(F)), the weighting factor is .50.

(D) Foreign medical graduates required to pass FMGEMS examination

(i) In general

Except as provided in clause (ii), such rules shall provide that, in the case of an individual who is a foreign medical graduate (as defined in paragraph (5)(D)), the individual shall not be counted as a resident on or after July 1, 1986, unless—

(I) the individual has passed the FMGEMS examination (as defined in paragraph (5)(E)), or

(II) the individual has previously received certification from, or has previously passed the examination of, the Educational Commission for Foreign Medical Graduates.

(ii) Transition for current FMGS

On or after July 1, 1986, but before July 1, 1987, in the case of a foreign medical graduate who—

(I) has served as a resident before July 1, 1986, and is serving as a resident after that date, but

(II) has not passed the FMGEMS examination or a previous examination of the Educational Commission for Foreign Medical Graduates before July 1, 1986,

the individual shall be counted as a resident at a rate equal to one-half of the rate at which the individual would otherwise be counted.

(E) Counting time spent in outpatient settings

Such rules shall provide that only time spent in activities relating to patient care shall be counted and that all the time so spent by a resident under an approved medical residency training program shall be counted towards the determination of full-time equivalency, without regard to the setting in which the activities are performed, if the hospital incurs all, or substantially all, of the costs for the training program in that setting.

(5) Definitions and special rules

As used in this subsection:

(A) Approved medical residency training program

The term "approved medical residency training program" means a residency or other postgraduate medical training program participation in which may be counted toward certification in a specialty or subspecialty and includes formal postgraduate training programs in geriatric medicine approved by the Secretary.

(B) Consumer price index

The term "consumer price index" refers to the Consumer Price Index for All Urban Consumers (United States city average), as published by the Secretary of Commerce.

(C) Direct graduate medical education costs

The term "direct graduate medical education costs" means direct costs of approved educational activities for approved medical residency training programs.

(D) Foreign medical graduate

The term "foreign medical graduate" means a resident who is not a graduate of—

(i) a school of medicine accredited by the Liaison Committee on Medical Education of the American Medical Association and the Association of American Medical Colleges (or approved by such Committee as meeting the standards necessary for such accreditation),

(ii) a school of osteopathy accredited by the American Osteopathic Association, or approved by such Association as meeting the standards necessary for such accreditation, or

(iii) a school of dentistry or podiatry which is accredited (or meets the standards for accreditation) by an organization recognized by the Secretary for such purpose.

(E) FMGEMS examination

The term "FMGEMS examination" means parts I and II of the Foreign Medical Graduate Examination in the Medical Sciences recognized by the Secretary for this purpose.

(F) Initial residency period

The term "initial residency period" means the period of board eligibility plus one year, except that—

(i) except as provided in clause (ii), in no case shall the initial period of residency exceed an aggregate period of formal training of more than five years for any individual, and

(ii) a period, of not more than two years, during which an individual is in a geriatric residency or fellowship program which meets such criteria as the Secretary may establish, shall be treated as part of the initial residency period, but shall not be counted against any limitation on the initial residency period.

The initial residency period shall be determined, with respect to a resident, as of the time the resident enters the residency training program.

(G) Period of board eligibility

(i) General rule

Subject to clauses (ii) and (iii), the term "period of board eligibility" means, for a resident, the minimum number of years of formal training necessary to satisfy the requirements for initial board eligibility in the particular specialty for which the resident is training.

(ii) Application of 1985–1986 directory

Except as provided in clause (iii), the period of board eligibility shall be such period specified in the 1985–1986 Directory of Residency Training Programs published by the Accreditation Council on Graduate Medical Education.

(iii) Changes in period of board eligibility

On or after July 1, 1989, if the Accreditation Council on Graduate Medical Education, in its Directory of Residency Training Programs—

(I) increases the minimum number of years of formal training necessary to satisfy the requirements for a specialty, above the period specified in its 1985-1986 Directory, the Secretary may increase the period of board eligibility for that specialty, but not to exceed the period of board eligibility specified in that later Directory, or

(II) decreases the minimum number of years of formal training necessary to satisfy the requirements for a specialty, below the period specified in its 1985-1986 Directory, the Secretary may decrease the period of board eligibility for that specialty, but not below the period of board eligibility specified in that later Directory.

(H) Resident

The term "resident" includes an intern or other participant in an approved medical residency training program.

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, § 601(a)(1), (2), (b), (c), (d)(2), (e), 97 Stat. 149, 150, 152; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2307(b)(1), 2310(a), 2311(a)-(c), 2312(a), (b), 2313(a), (b), (d), 2315(a)-(c), 2354(b)(42)-(44), 98 Stat. 1073, 1075-1080, 1102; Nov. 8, 1984, Pub. L. 98-617, § 3(b)(9), 98 Stat. 3296; Apr. 7, 1986, Pub. L. 99-272, title IX, §§ 9101(b), (c), 9102(a)-(c), 9104(a), (b), 9105(a)-(c), 9106(a), 9107(a), 9109(a), 9111(a), 9127(a), 9202(a), 100 Stat. 153-155, 157-162, 170, 171; July 2, 1986, Pub. L. 99-349, title II, § 206, 100 Stat. 749; Oct. 21, 1986, Pub. L. 99-509, title IX, §§ 9302(a)(1), (2), (b)(1), (c), (d)(1)(A), (e), 9303, 9304(a)-(c), 9306(a)-(c), 9307(c)(1), 9314(a), 9320(g), 100 Stat. 1982-1985, 1988, 1995, 2005, 2015; Oct. 22, 1986, Pub. L. 99-514, § 2, title XVIII, § 1895(b)(1)(A)-(C), (2)(A)-(C), (3), (9), 100 Stat. 2095, 2931-2933.)

AMENDMENT OF SUBSECTION (e)

Pub. L. 99-509, title IX, § 9321(e)(2), (3)(B), Oct. 21, 1986, 100 Stat. 2018, provided that, effective beginning with fiscal year

1989, subsection (e) of this section is amended by striking "April" and inserting "March" in paragraph (3)(A), and striking "June" and inserting "May" in paragraph (5)(A).

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in text, are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

The Internal Revenue Code of 1988, referred to in subsec. (b)(6), is classified generally to Title 26, Internal Revenue Code.

Section 222(a) of the Social Security Amendments of 1972, referred to in subsec. (c)(4)(B), is section 222(a) of Pub. L. 92-603, Oct. 30, 1972, 86 Stat. 1329, which is set out as a note under section 1395b-1 of this title.

Section 9104(a) of the Medicare and Medicaid Budget Reconciliation Amendments of 1985, referred to in subsec. (d)(2)(C)(i), is section 9104(a) of Pub. L. 99-272, which amended subsec. (d)(5)(B) of this section.

Section 9104 of the Medicare and Medicaid Budget Reconciliation Amendments of 1985, referred to in subsec. (d)(3)(C)(ii), is section 9104 of Pub. L. 99-272, which amended subsec. (d)(2)(C)(i), (3)(C), (D)(i)(I), (ii)(I), and (5)(B) of this section.

Section 9304 of the Omnibus Budget Reconciliation Act of 1986, referred to in subsec. (e)(1)(C)(ii), is section 9304 of Pub. L. 99-509, which enacted subsecs. (d)(9) and (e)(1)(C) of this section and amended subsec. (d)(5)(C)(i)(I), (ii) of this section.

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (e)(2), (8)(C)(i), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

Section 10(a)(1) of the Federal Advisory Committee Act, referred to in subsec. (e)(6)(C), is section 10(a)(1) of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5.

Part B of subchapter XI of this chapter, referred to in subsec. (f)(2), is classified to section 1320c et seq. of this title.

AMENDMENTS

1986—Subsec. (a)(4). Pub. L. 99-509, § 9320(g)(1), struck out ", costs of anesthesia services provided by a certified registered nurse anesthetist," after "approved educational activities".

Pub. L. 99-509, § 9303(c), substituted "October 1 of 1987 (or of such later year as the Secretary may, in his discretion, select)" for "October 1, 1987".

Pub. L. 99-349 substituted "1987" for "1986".

Pub. L. 99-272, § 9107(a)(2), inserted "a return on equity capital," after "anesthetist," and "other" before "capital-related costs".

Subsec. (b)(3)(B). Pub. L. 99-272, § 9101(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "For purposes of subparagraph (A) and subsection (d) of this section and except as provided in subsection (e) of this section, the 'applicable percentage increase' for any 12-month cost reporting period or fiscal year shall be equal to one-quarter of 1 percentage point plus the percentage, estimated by the Secretary before the beginning of the period or year, by which the cost of the mix of goods and services (including personnel costs but excluding non-operating costs) comprising routine, ancillary, and special care unit inpatient hospital services, based on an index of appropriately weighted indicators of changes in wages and prices which are representative of the mix of goods and services included in such inpatient hospital services, for such cost reporting period or fiscal year will exceed the cost of such mix of goods and services for the preceding 12-month cost reporting period or fiscal year. In determining a percentage change under subsection (e)(4) of this section with respect to discharges occurring in any cost reporting period or fiscal year beginning on or after October 1, 1985, and before October 1, 1986, the Secretary may not establish a percentage increase which exceeds the applicable percentage increase otherwise determined for that period or fiscal year under the preceding sentence."

Subsec. (b)(3)(B)(i)(II). Pub. L. 99-509, § 9302(a)(1), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: "for fiscal years 1987 and 1988, a percentage determined by the Secretary pursuant to subsection (e)(4) of this section, but not to exceed the market basket percentage increase (as defined in clause (ii)), and".

Subsec. (b)(6). Pub. L. 99-514, § 2, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (c)(7). Pub. L. 99-272, § 9109(a), added par. (7).

Subsec. (d)(1)(A). Pub. L. 99-272, § 9102(a), substituted "1987" for "1986" in cls. (ii) and (iii).

Subsec. (d)(1)(C). Pub. L. 99-272, § 9102(b), struck out ", or discharges occurring" after "periods beginning" in introductory provision, and "and" after "percent;" in cl. (ii), added cl. (iii), redesignated former cl. (iii) as (iv), and in cl. (iv) substituted "on or after October 1, 1986, and before October 1, 1987" for "on or after October 1, 1985, and before October 1, 1986".

Subsec. (d)(1)(D). Pub. L. 99-272, § 9102(c), struck out "cost reporting periods beginning, or" before "discharges occurring" in introductory provision, in cl. (i) substituted "1986" for "1985", and in cl. (ii) substituted "1986" and "1987" for "1985" and "1986", respectively.

Subsec. (d)(2)(C)(i). Pub. L. 99-509, § 9307(c)(1)(A), struck out Pub. L. 99-514, § 1895(b)(1)(A), which had directed the striking out of "(taking into account, for discharges occurring after September 30, 1986, the amendments made by section 9104(a) of the Medicare and Medicaid Budget Reconciliation Amendments of 1985)" after "medical education costs".

Pub. L. 99-272, § 9104(b)(1), inserted "(taking into account, for discharges occurring after September 30, 1986, the amendments made by section 9101(a) of the Medicare and Medicaid Budget Reconciliation Amendments of 1985)" after "medical education costs".

Subsec. (d)(2)(C)(iv). Pub. L. 99-509, § 9306(c), substituted "1989" for "1988".

Pub. L. 99-509, § 9307(c)(1)(B), struck out Pub. L. 99-514, § 1895(b)(2)(A), which had directed that cl. (iv) was to be struck out.

Pub. L. 99-272, § 9105(b), added cl. (iv).

Subsec. (d)(3)(A). Pub. L. 99-509, § 9302(a)(2)(A), (c), substituted "1986, 1987, and 1988" for "and 1988" and inserted provisions relating to the computation of urban and rural averages with respect to discharges occurring on or after October 1, 1987.

Pub. L. 99-509, § 9307(c)(1)(A), struck out Pub. L. 99-514, § 1895(b)(1)(B), which had directed insertion of "If the formula under paragraph (5)(B) for determining payments for the indirect costs of medical education is changed for any fiscal year, the Secretary shall readjust the standardized amounts previously determined for each hospital to take into account the changes in that formula."

Pub. L. 99-272, § 9101(c)(1), substituted "for each of fiscal years 1985 and 1986" for "for fiscal year 1985".

Subsec. (d)(3)(B). Pub. L. 99-509, § 9302(b)(1), inserted "for hospitals located in an urban area and for hospitals located in a rural area" after "subparagraph (A)", and inserted before the period "for hospitals located in such respective area".

Subsec. (d)(3)(C). Pub. L. 99-272, § 9104(b)(2), designated existing provision as cl. (i), substituted "For discharges occurring in fiscal year 1985, the Secretary" for "The Secretary", and added cl. (ii).

Subsec. (d)(3)(C)(ii). Pub. L. 99-509, § 9306(c), substituted "1989" for "1988" in subcls. (I) and (II).

Pub. L. 99-509, § 9307(c)(1)(A), struck out Pub. L. 99-514, § 1895(b)(1)(C), which had directed a general amendment of cl. (ii) to read as follows: "The Secre-

tary shall further reduce each of the average standardized amounts by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this subsection based on DRG prospective payment amounts which is the difference between—

"(I) the sum of the additional payment amounts under paragraph (5)(B) (relating to indirect costs of medical education) if the indirect teaching adjustment factor were equal to 1.159r (as 'r' is defined in paragraph (5)(B)(ii)), and

"(II) that sum using the factor specified in paragraph (5)(B)(ii)(II))."

Subsec. (d)(3)(C)(iii). Pub. L. 99-509, § 9307(c)(1)(B), struck out Pub. L. 99-514, § 1895(b)(2)(B), which had added cl. (iii) reading as follows: "The Secretary shall further reduce each of the average standardized amounts by reducing the standardized amount for each hospital (as previously determined without regard to this clause) by a proportion equal to the proportion (established by the Secretary) of the amount of payments under this subsection based on DRG prospective payment amounts which are additional payments described in paragraph (5)(F) (relating to disproportionate share payments) for subsection (d) hospitals."

Subsec. (d)(3)(D)(i)(I), (ii)(I). Pub. L. 99-272, § 9104(b)(3), inserted "or reduced" after "(B), and adjusted".

Subsec. (d)(4)(C). Pub. L. 99-509, § 9302(e)(1), substituted "in fiscal year 1988 and at least annually" for "in fiscal year 1986 and at least every four fiscal years".

Subsec. (d)(5)(B). Pub. L. 99-272, § 9104(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "The Secretary shall provide for an additional payment amount for subsection (d) hospitals with indirect costs of medical education, in an amount computed in the same manner as the adjustment for such costs under regulations (in effect as of January 1, 1983) under subsection (a)(2) of this section, except that in the computation under this subparagraph the Secretary shall use an educational adjustment factor equal to twice the factor provided under such regulations. In determining such adjustment the Secretary shall not distinguish between those interns and residents who are employees of a hospital and those interns and residents who furnish services to a hospital but are not employees of such hospital."

Subsec. (d)(5)(B)(ii). Pub. L. 99-509, § 9306(c), substituted "1989" for "1988" in subcls. (I) and (II).

Subsec. (d)(5)(C)(i). Pub. L. 99-509, § 9302(d)(1)(A), designated existing provisions as subcl. (I) and added subcl. (II).

Pub. L. 99-272, § 9106(a), inserted "and which shall not require a rural osteopathic hospital to have more than 3,000 discharges in a year in order to be classified as a rural referral center" before the period in second sentence.

Pub. L. 99-272, § 9105(c) struck out ", and of public or other hospitals that serve a significantly disproportionate number of patients who have low income or are entitled to benefits under part A of this subchapter" after "in rural areas)".

Subsec. (d)(5)(C)(i)(I). Pub. L. 99-509, § 9304(b)(1), inserted "(other than under paragraph (9))" after "established under this subsection" in first sentence.

Subsec. (d)(5)(C)(ii). Pub. L. 99-509, § 9304(b)(2), inserted "(other than under paragraph (9))" after "this subsection" in second and third sentences.

Pub. L. 99-509, § 9302(e)(4), substituted "1988" for "1986".

Pub. L. 99-272, § 9111(a), inserted provision authorizing the Secretary to adjust amount of payments to sole community hospitals that realize a significant increase in operating costs in a cost reporting period attributable to addition of new inpatient facilities or services.

Subsec. (d)(5)(E). Pub. L. 99-509, § 9320(g)(2), struck out subpar. (E) which read as follows: "The Secretary shall provide for an additional payment amount for any subsection (d) hospital equal to the reasonable costs incurred by such hospital for anesthesia services provided by a certified registered nurse anesthetist. Payment under this subparagraph shall be the only payment made to such hospital with respect to such services."

Subsec. (d)(5)(F). Pub. L. 99-272, § 9105(a), added subpar. (F).

Subsec. (d)(5)(F)(i). Pub. L. 99-509, § 9306(c), substituted "1989" for "1988".

Subsec. (d)(5)(F)(iv)(I). Pub. L. 99-509, § 9306(b)(1), inserted "or is described in the second sentence of subclause (III)" after "100 or more beds".

Subsec. (d)(5)(F)(iv)(III). Pub. L. 99-509, § 9306(b)(2), inserted "and is not described in the second sentence of clause (v)" after "rural area".

Subsec. (d)(5)(F)(v). Pub. L. 99-509, § 9306(a), inserted at end "A hospital located in a rural area and with 500 or more beds also 'serves a significantly disproportionate number of low income patients' for a cost reporting period if the hospital has a disproportionate patient percentage (as defined in clause (vi)) for that period which equals or exceeds a percentage specified by the Secretary."

Subsec. (d)(5)(F)(vi)(1). Pub. L. 99-514, § 1895(b)(2)(C), substituted "supplemental" for "supplementary" and "period" for "fiscal year".

Subsec. (d)(9). Pub. L. 99-509, § 9304(a), added par. (9).

Subsec. (e)(1)(C). Pub. L. 99-509, § 9304(c), added subpar. (C).

Subsec. (e)(3). Pub. L. 99-509, § 9302(e)(3), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 99-272, § 9101(c)(2), struck out "(instead of the applicable percentage increase described in subsection (b)(3)(B) of this section)" after "should be used".

Subsec. (e)(4). Pub. L. 99-509, § 9302(a)(2)(B), (e)(2), substituted "recommend for fiscal year 1988 an appropriate change factor for inpatient hospital services for discharges in that fiscal year and shall determine for each subsequent fiscal year" for "determine for each fiscal year (beginning with fiscal year 1987) and inserted at end "The percentage change shall be the same for all subsection (d) hospitals and subsection (d) Puerto Rico hospitals, but may be different from that for other hospitals (and units not included as such hospitals) and may vary among such other hospitals and units."

Pub. L. 99-272, § 9101(c)(3), substituted "fiscal year 1987" for "fiscal year 1986".

Subsec. (e)(5). Pub. L. 99-509, § 9302(a)(2)(C), inserted "recommendation or" before "determination" in subpars. (A) and (B).

Subsec. (e)(6)(A). Pub. L. 99-272, § 9127(a), substituted "17 individuals" for "15 individuals".

Subsec. (g)(1). Pub. L. 99-349 substituted "1987" for "1986" in two places.

Subsec. (g)(2). Pub. L. 99-272, § 9107(a)(1), designated existing provision as subpar. (A), inserted "the applicable percentage (described in subparagraph (B)) of", and added subpar. (B).

Subsec. (g)(2)(B). Pub. L. 99-514, § 1895(b)(3), realigned margins of subpar. (B).

Subsec. (g)(3). Pub. L. 99-509, § 9303(a), added par. (3).

Subsec. (g)(3)(A). Pub. L. 99-509, § 9303(b), inserted "and a subsection (d) Puerto Rico hospital" after "subsection (d) hospital".

Subsec. (h). Pub. L. 99-272, § 9202(a), added subsec. (h).

Subsec. (h)(2)(C). Pub. L. 99-514, § 1895(b)(9)(A), substituted "subparagraph (B)" for "paragraph (B)".

Subsec. (h)(4)(D). Pub. L. 99-514, § 1895(b)(9)(B), (C), redesignated subpar. (E) as (D) and in cl. (ii) inserted "but before July 1, 1987,".

Subsec. (h)(4)(E). Pub. L. 99-509, § 9314(a), added subpar. (E).

Pub. L. 99-514, § 1895(b)(9)(C), redesignated former subpar. (E) as (D).

Subsec. (h)(5)(B). Pub. L. 99-514, § 1895(b)(9)(D), substituted "The" for "As used in this paragraph, the".

1984—Subsec. (a)(2)(B). Pub. L. 98-369, § 2354(b)(42), substituted "disproportionate" for "disportionate".

Subsec. (a)(4). Pub. L. 98-369, § 2312(b), temporarily inserted ", costs of anesthesia services provided by a certified registered nurse anesthetist" after "approved educational activities". See Effective and Termination Dates of 1984 Amendments note below.

Subsec. (b)(3)(A)(ii). Pub. L. 98-369, § 2354(b)(43), inserted "of" after "in the case".

Subsec. (b)(3)(B). Pub. L. 6-369, § 2310(a), substituted "one-quarter of 1 percentage point" for "1 percentage point" and inserted provision that in determining the percentage change under subsec. (e) of this section with respect to discharges occurring in any cost reporting period or fiscal year beginning on or after Oct. 1, 1985, and before Oct. 1, 1966, the Secretary may not establish a percentage increase which exceeds the applicable percentage increase otherwise determined for that period or fiscal year under the preceding sentence.

Subsec. (c)(4)(A). Pub. L. 98-369, § 2315(a), substituted "(D), and (E)" for "and (D)".

Subsec. (d)(2)(D). Pub. L. 98-369, § 2315(b), struck out "Standard" before "Metropolitan" in provision following cl. (ii).

Pub. L. 98-369, § 2311(b), inserted provision for determining the region a hospital located in a Metropolitan Statistical Area would be deemed to be located.

Subsec. (d)(3)(D)(i)(I). Pub. L. 8-369, § 2354(b)(44), substituted "(C))" for "(C),".

Subsec. (d)(5)(B). Pub. L. 98-369, § 2307(b)(1), inserted provision that in determining such adjustment the Secretary not distinguish between those interns and residents who are employees of a hospital and those who furnish services to a hospital but are not employees of such hospital.

Subsec. (d)(5)(C)(i). Pub. L. 98-617 substituted "August 17, 1984" for "30 days after July 16, 1984" before "for implementation by".

Pub. L. 98-869, § 2311(a), inserted provisions permitting a hospital classified as a rural hospital to appeal to the Secretary for reclassification as a rural referral center on the basis of criteria established and published by the Secretary and requiring the Secretary to make a final determination with respect to such appeal within 60 days after the date the appeal was submitted.

Subsec. (d)(5)(E). Pub. L. 98-369, § 2312(a), temporarily added subpar. (E). See Effective and Termination Dates of 1964 Amendments note below.

Subsec. (d)(8). Pub. L. 8-369, § 2311(c), added par. (8).

Subsec. (e)(2). Pub. L. 98-369, § 2313(a), inserted "(without regard to the provisions of title 5 governing appointments in the competitive service)" after "appointed by the Director".

Subsec. (e)(5). Pub. L. 98-369, § 2315(c)(1), struck out "for public comment" after "have published" in provisions preceding subpar. (A).

Subsec. (e)(5)(A). Pub. L. 98-369, § 2315(c)(2), inserted "for public comment" after "that fiscal year".

Subsec. (e)(6)(C). Pub. L. 98-369, § 2313(b)(3), inserted provision that section 10(a)(1) of the Federal Advisory Committee Act not apply to any portion of a Commission meeting if the Commission, by majority vote, determines such portion of such meeting should be closed.

Subsec. (e)(6)(C)(i). Pub. L. 98-369, § 2313(b)(1), amended cl. (i) generally, substituting provision authorizing the Commission to employ and fix the compensation of an Executive Director, subject to the approval of the Director of the Office, and such other porsonnel, not to exceed 25, as necessary, without regard to the provisions of title 5 governing appointment in the competitive service, for provision authorizing the Commission to employ and fix the compensation of such personnel, not to exceed 25, as may be necessary to carry out its duties.

Subsec. (e)(6)(C)(iii). Pub. L. 98-369, § 2313(b)(2), inserted "(without regard to section 5 of title 41)" after "Commission".

Subsec. (e)(6)(D). Pub. L. 98-369, § 2313(b)(4), inserted provision relating to payment of physician comparability allowance in the same manner as provided under section 5946 of title 5 and providing that for such purpose subsec. (i) of such section apply to the Commission in the same manner as it applies to the Tennessee Valley Authority.

Subsec. (e)(6)(J). Pub. L. 98-369, § 2313(d), added subpar. (J).

1983—Subsec. (a)(1)(D). Pub. L. 98-21, § 601(a)(1), added subpar. (D).

Subsec. (a)(4). Pub. L. 98-21, § 601(a)(2), inserted provision that term "operating costs of inpatient hospital services" does not include costs of approved educational activities, or, with respect to costs incurred in cost reporting periods beginning prior to Oct. 1, 1986, capital-related costs, as defined by the Secretary.

Subsec. (b)(1). Pub. L. 96-21, § 601(b)(1), (2), in provisions preceding subpar. (A), substituted "Notwithstanding section 1395f(b) of this title but subject to the provisions of section 1395e of this title" for "Notwithstanding sections 1395f(b) of this title, but subject to the provisions of sections 1395e of this title" and inserted "(other than a subsection (d) hospital, as defined in subsection (d)(1)(B) of this section)".

Pub. L. 98-21, § 601(b)(3), inserted "(other than on the basis of a DRG prospective payment rate determined under subsection (d) of this section)" in provisions following subpar. (B).

Subsec. (b)(2). Pub. L. 98-21, § 601(b)(4), struck out par. (2) which provided that par. (1) would not apply to cost reporting periods of hospitals beginning on or after Oct. 1, 1985.

Subsec. (b)(3)(B). Pub. L. 98-21, § 601(b)(5)-(8), inserted "and subsection (d) of this section and except as provided in subsection (e) of this section" after "subparagraph (A)", inserted "or fiscal year" after "cost reporting period" each place it appears, inserted "before the beginning of the period or year" after "estimated by the Secretary", and substituted "will exceed" for "exceeds".

Subsec. (b)(6). Pub. L. 96-21, § 601(b)(9), added par. (6) and repealed a prior par. (6) which directed the Secretary to provide for an adjustment under this paragraph in the amount of payment otherwise provided a hospital under this subseetion in the case of a hospital which, as of Aug. 15, 1982, was subject to FICA taxes and which was not subject te such taxes for part or all of a cost reporting period beginning on or after Oct. 1, 1982, that in making such adjustment for a cost reporting period the Secretary was to estimate the amount of the operating costs of inpatient hospital services that would have resulted if the hospital was subject to the FICA taxes during that period, that in making such estimate the Seeretary was to reduce the amount of such FICA taxes that would have been paid (but not below zero) by the amount of costs which the hospital demonstrated to the satisfaction of the Secretary were incurred in the period for pensions, health, and other fringe benefits for employees (and former employees and family members) comparable to, and in lieu of, the benefits provided under subchapter II of this chapter and this subchapter, that if a hospital's operating costs of inpatient hospital services estimated under subparagraph (B) was greater than the hospital's operating costs of inpatient hospital services determined without regard to this paragraph for a cost reporting period, then the Secretary was to reduce the amount otherwise paid the hospital (respecting operating costs of inpatient hospital services) under this title (taking into account any limitation under subsction (a) of this section) for the period by the amount by which (i) the amount that

would have been paid the hospital if (1) the amount of the operating costs of inpatient hospital services estimated under subparagraph (B) were treated as the amount of the operating costs of inpatient hospital services and (II) subsection (a) of this section did not apply to the determination, exceeded (ii) the amount that would otherwise have been paid the hospital if subsection (a) of this section (and this paragraph) did not apply, except that, in making such determination for cost reporting periods beginning on or after Oct. 1, 1984, clause (ii) of paragraph (1)(B) was to continue to apply.

Subsec. (c)(1). Pub. L. 98-21, § 601(c)(1), added subpars. (D) and (E) and provisions following subpar. (E).

Subsec. (c)(3)(A). Pub. L. 98-21, § 601(c)(2)(A), substituted "meets the requirements of subparagraphs (A), (D), and (E) of paragraph (1) and, if applicable, the requirements of paragraph (5)," for "meets the requirement of paragraph (1)(A)".

Subsec. (c)(3)(B). Pub. L. 98-21, § 601(c)(2)(B), inserted "(or, if applicable, in paragraph (5))".

Subsec. (c)(4) to (6). Pub. L. 98-21, § 601(c)(3), added pars. (4) to (6).

Subsec. (d). Pub. L. 98-21, § 601(d)(2), (e), added subsec. (d) and redesignated former subsec. (d), relating to the elimination of lesser-of-cost-or-charges provisions, as subsec. (j) of section 1814 of act Aug. 14, 1935, which is classified to subsec. (j) of section 1395f of this title.

Subsecs. (e) to (g). Pub. L. 93-21, § 601(e), added subsecs. (e) to (g).

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 1895(b)(1)(D) of Pub. L. 99-514, which provided for applicability of amendments to this section by section 1895(b)(1) of Pub. L. 99-514 to discharges occurring on or after Oct. 1, 1986, with certain exceptions, was repealed by Pub. L. 99-509, title IX, § 9307(c)(1)(A), Oct. 21, 1986, 100 Stat. 1995.

Section 1895(b)(2)(D) of Pub. L. 99-514 provided that: "The amendments made by subparagraph (C) [amending this section] apply to discharges occurring on or after May 1, 1986, and the amendments made by subparagraphs (A) and (B) [amending this section] apply to discharges occurring on or after Octeber 1, 1986."

Amendment by section 1895(b)(3), (9) of 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.

Section 9302(a)(3) of Pub. L. 99-509 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1986 and, for purposes of seetion 1886(d) of the Secial Security Act [subsec. (d) of this section], for cost reporting periods beginning and discharges occurring on or after October 1, 1988."

Section 9302(b)(2) of Pub. L. 99-509 provided that: "The amendments made by paragraph (1) [amending this section] shall apply te discharges occurring on or after October 1, 1986."

Section 9302(d)(1)(B) of Pub. L. 99-509 provided that:

"(i) Subject to clause (ii), the amendments made by subparagraph (A) [amending this section] shall apply to payments for discharges occurring on or after October 1, 1986.

"(ii) An appeal for classification of a rural hospital as a regional referral center, pursuant to the amendments made by subparagraph (A), which is filed before January 1, 1987, and which is approved shall be effective with respect to discharges occurring on or after October 1, 1986."

Section 9303(b) of Pub. L. 99-509 provided in part that the amendment made by section 9303(b) of Pub. L. 99-509 is effective for cost reporting periods beginning and discharges occurring (as the case may be) on or after Oct. 1, 1987.

Section 9304(d) of Pub. L. 99-509 provided that: "The amendments made by this section [amending this section] shall apply to discharges occurring on or after October 1, 1987."

Section 9306(d) of Pub. L. 99-509 provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply to discharges occurring on or after October 1, 1986."

Section 9307(c)(1) of Pub. L. 99-509 provided in part that the amendment by section 9307(c)(1) of Pub. L. 99-509 is effective as if included in the enactment of the Tax Reform Act of 1986 (Pub. L. 99-514), if H.Con.Res. 395, 99th Congress, 2d Session, is not adopted. H.Con.Res. 395 was not adopted.

Section 9314(b) of Pub. L. 99-509 provided that: "The amendments made by subsection (a) [amending this section] shall apply to payments for approved residency training programs as of July 1, 1987."

Amendment by section 9320(g) of Pub. L. 99-509 applicable to services furnished on or after Jan. 1, 1989, see section 9320(i) of Pub. L. 99-509 set out as a note under section 1395k of this title.

Section 9321(e)(3)(B) of Pub. L. 99-509 provided that: "The amendments made by paragraph (2) [amending this section] shall take effect beginning with fiscal year 1989."

Section 9101(d) of Pub. L. 99-272 provided that: "The amendment made by subsection (a) [amending section 5(c) of Pub. L. 99-107, set out as a note below] shall take effect on March 15, 1986, and the amendments made by subsection (c) [amending this section] shall take effect on the date of the enactment of this Act [Apr. 7, 1986]."

Section 9101(e) of Pub. L. 99-272 provided that:

"(1) PPS HOSPITALS, DRG PORTION OF PAYMENT.—In the case of a subsection (d) hospital (as defined in paragraph (4))—

"(A) the amendment made by subsection (b) [amending this section] shall apply to payments made under section 1886(d)(1)(A) of such Act [subsec. (d)(1)(A) of this section] made on the basis of discharges occurring on or after May 1, 1986; and

"(B) for discharges occurring on or after October 1, 1986, the applicable percentage increase (described in section 1886(b)(3)(B) [subsec. (b)(3)(B) of this section]) for discharges occurring during fiscal year 1988 shall be deemed to have been ½ percent.

"(2) PPS HOSPITALS, HOSPITAL SPECIFIC PORTION OF PAYMENT.—In the case of a subsection (d) hospital—

"(A) the amendment made by subsection (b) [amending this section] shall apply to payments under section 1886(d)(1)(A) of the Social Security Act [subsec. (d)(1)(A) of this seetion] made on the basis of discharges occurring during a cost reporting period of a hospital, for the hospital's cost reporting periods beginning on or after October 1, 1985;

"(B) notwithstanding subparagraph (A), for the cost reporting period beginning during fiscal year 1986, the applicable percentage increase (as defined in section 1886(b)(3)(B) of such Act [subsee. (b)(3)(B) of this section]) for the—

"(i) first 7 months of the cost reporting poriod shall be 0 percent, and

"(ii) for the remaining 5 months of the cost reporting period shall be ½ pereent; and

"(C) for cost reporting poriods beginning on or after October 1, 1986, the applicable percentage increase (as so defined) with respeet to the previous cost reporting period shall be deemed to have been ½ percent.

"(3) PPS-EXEMPT HOSPITALS.—In the case of a hospital that is not a subsection (d) hospital—

"(A) the amendment made by subsection (b) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1985;

"(B) notwithstanding subparagraph (A), for the hospital's cost reporting period beginning during fiscal year 1986, payment under title XVIII of the Secial Security Act [this subehapter] shall be made

as though the applicable percentage increase described in section 1886(b)(3)(B) [subsec. (b)(3)(B) of this section] were equal to ¾ of 1 percent; and

"(C) for cost reporting periods beginning on or after Octeber 1, 1986, the applicable percentage increase (as so defined) with respect to the cost reporting period beginning during fiscal year 1986 shall be deemed to have been ¼ percent.

"(4) DEFINITION.—In this subsection, the term 'subsection (d) hospital' has the meaning given such term in section 1886(d)(1)(B) of the Social Security Act [subsec. (d)(1)(B) of this section]."

Section 9102(d) of Pub. L. 99-272 provided that:

"(1) DELAY IN FINAL TRANSITION.—The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Apr. 7, 1986]."

"(2) CHANGE IN HOSPITAL SPECIFIC PERCENTAGE.—The amendments made by subsection (b) [amending this section] shall apply—

"(A) to cost reporting periods beginning on or after Octeber 1, 1985, but

"(B) notwithstanding subparagraph (A), for a hospital's cost reporting period beginning during fiscal year 1986, for purposes of section 1886(d)(1)(A) of the Social Security Act [subsec. (d)(1)(A) of this section]—

"(i) during the first 7 months of the period the 'target percentage' is 50 percent and the 'DRG percentage' is 50 percent, and

"(ii) during the remaining 5 months of the period the 'target percentage' is 45 percent and the 'DRG percentage' is 55 percent.

"(3) CHANGE IN BLENDED RATE.—The amendments made by subsection (c) [amending this section] shall apply to discharges occurring on or after May 1, 1986.

"(4) EXCEPTION.—

"(A) Notwithstanding any other provision of this subsection, the amendments made by this section [amending this section] shall not apply to payments with respect to the operating costs of inpatient hospital services (as defined in section 1886(a)(4) of the Social Security Act [subsec. (a)(4) of this section]) of a subsection (d) hospital (as defined in section 1886(d)(1)(B) of such Act [subsec. (d)(1)(B) of this section]) located in the State of Oregon.

"(B) Notwithstanding any other provision of law, for a cost reporting period beginning during fiscal year 1986 of a subsection (d) hospital to which the amendments made by this section [amending this section] do not apply, for purposes of section 1886(d)(1)(A) of of [sic] Social Security Act [subsec. (d)(1)(A) of this section]—

"(i) during the first 7 months of the period the 'target percentage' is 50 percent and the 'DRG percentage' is 50 percent, and

"(ii) during the remaining 5 months of the period the 'target percentage' is 25 percent and the 'DRG percentage' is 75 percent.

"(C) Notwithstandmg any other provision of law, for purposes of section 1886(d)(1)(D) of such Act [subsec. (d)(1)(D) of this section], the applicable combined adjusted DRG prospective payment rate for a subsection (d) hospital to which the amendments made by this section [amending this section] do not apply is, for discharges occurring on or after October 1, 1985, and before May 1, 1986, a combined rate consisting of 25 percent of the national adjusted DRG prospective payment rate and 75 percent of the regional adjusted DRG prospective payment rate for such discharges."

Section 9104(c) of Pub. L. 99-272 provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to discharges occurring on or after May 1, 1986.

"(2) The amendments made by this section shall not first be applied to discharges occurring as of a date unless, for discharges occurring on that date, the amendments made by section 9105 [amending this section] are also being applied."

Section 9105(e) of Pub. L. 99-272 provided that: "The amendments made by this section [amending this section] shall apply to discharges occurring on or after May 1, 1986."

Section 9106(b) of Pub. L. 99-272 provided that: "The amendment made by subsection (a) [amending this section] shall apply to cost reporting periods beginning on or after January 1, 1986."

Section 9107(c)(1) of Pub. L. 99-272 provided that: "The amendments made by subsection (a) [amending this section] shall apply to hospital cost reporting periods beginning on or after October 1, 1986."

Section 9109(b) of Pub. L. 99-272 provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Apr. 7, 1986]."

Section 9111(b) of Pub. L. 99-272 provided that: "The amendment made by this section [amending this section] shall apply to payments for cost reporting periods beginning on or after October 1, 1983, and before October 1, 1989."

Section 9202(b) of Pub. L. 99-272 provided that: "The amendment made by subsection (a) [amending this section] shall apply to hospital cost reporting periods beginning on or after July 1, 1985."

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENTS

Amendment by Pub. L. 98-617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98-369, see section 3(c) of Pub. L. 98-617, set out as a note under section 1395f of this title.

Section 2307(b)(2) of Pub. L. 98-369 provided that: "The amendment made by paragraph (1) [amending subsec. (d)(5)(B) of this section] shall apply to cost reporting periods beginning on or after October 1, 1984."

Section 2310(b) of Pub. L. 98-369 provided that: "The amendments made by this section [amending subsec. (b)(3)(B) of this section] shall apply to cost reporting periods beginning in, and discharges occurring in, fiscal year 1985 and thereafter."

Section 2311(d) of Pub. L. 98-369 provided that:

"(1) Except as provided in paragraph (2), the amendments made by subsections (b) [amending subsec. (d)(2)(D) of this section] and (c) [enacting subsec. (d)(8) of this section] shall be effective with respect to cost reporting periods beginning on or after October 1, 1983, and the amendment made by subsection (a) [amending subsec. (d)(5)(C)(i) of this section] shall be effective with respect to cost reporting periods beginning on or after October 1, 1984.

"(2) The amendment made by subsection (b) [amending subsec. (d)(2)(D) of this section] shall not apply so as to reduce any payment under section 1880(d) of the Social Security Act [subsec. (d) of this section] to a hospital the region of which is deemed to be changed pursuant to such amendment for discharges occurring in any cost reporting period beginning before October 1, 1984."

Section 2312(c) of Pub. L. 98-369, as amended by Pub. L. 99-509, title IX, § 9320(a), Oct. 21, 1986, 100 Stat. 2013, provided that: "The amendments made by subsections (a) [enacting subsec. (d)(5)(E) of this section] and (b) [amending subsec. (a)(4) of this section] shall apply to cost reporting periods beginning on or after October 1, 1984, and before January 1, 1989. In the case of a cost reporting period that begins before January 1, 1989, but end[s] after such dato, additional payments under the amendinent made by subsection (a) shall be proportionately reduced to reflect the portion of the period occurring after such date."

Amendment by section 2313(a), (b), and (d) of Pub. L. 98-369 effective July 18, 1984, see section 2313(e) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 1395y of this title.

Section 2315(g) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 1395i-2, 1395cc, and 1395ww of this title and enacting and amending provisions set out as notes

under this section] shall be effective as though they had been included in the enactment of the Social Security Amendments of 1983 (Public Law 98-21)."

Amendment by section 2354(b)(42)-(44) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or intorpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 1320a-1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 601(b)(9) of Pub. L. 98-21 provided in part that the repeal of subsec. (b)(6) of this section is effective with respect to cost reporting periods beginning on or aftor October 1, 1982, and that the enactment of a new subsec. (b)(6) of this section is effective with respect to cost reporting periods beginning on or after Octeber 1, 1983.

Section 604 of title VI of Pub. L. 98-21, as amended by Pub. L. 98-369, div. B, title III, § 2315(f)(1), July 18, 1984, 98 Stat. 1080, provided that:

"(a)(1) Except as provided in section 602(*l*) [amending section 1395cc of this title] and in paragraph (2), the amendments made by the preceding provisions of this title [amending sections 1320c-2, 1395f, 1395n, 1395x, 1395y, 1395cc, 1395mm, 1395oo, 1395rr, 1395ww, and 1395xx of this title] apply to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983. A change in a hospital's cost reporting period that has been made after November 1982 shall be recognized for purposes of this section only if the Secretary finds good cause for that change.

"(2) Section 1866(a)(1)(F) of the Social Security Act (as added by section 602(f)(1)(C) of this title) [42 U.S.C. 1395cc(a)(1)(F), section 1862(a)(14) (as added by section 602(e)(3) of this title) [42 U.S.C. 1395y(a)(14)] and sections 1886(a)(1)(G) and (H) of such Act (as added by section 602(f)(1)(C) of this title) [probably should be section 1866(a)(1)(G) and (H) which is classified to 42 U.S.C. 1395cc(a)(1)(G) and (H)] take effect on October 1, 1983.

"(b) The Socretary shall make an appropriate reduction in the payment amount under section 1886(d) of the Social Socurity Act (as amended by this title) [42 U.S.C. 1395ww(d)] for any discharge, if the admission has occurred before a hospital's first cost reporting period that begins after September 1983, to take into account amounts payable under title XVIII of that Act [this subehapter] (as in effect before the date of the enactment of this Act [Apr. 20, 1983]) for items and servicos furnished before that period.

"(c)(1) The Secretary shall cause to be published in the Federal Register a notice of the interim final DRG prospective payment rates established under subsection (d) of section 1886 of the Social Security Act (as amended by this title) [42 U.S.C. 1395ww(d)] no later than September 1, 1983, and allow for a peried of public comment thercon. Payment on the basis of prospective rates shall become effective on October 1, 1983, without the necessity for consideration of ccmmenta received, but the Secretary shall, by notice published in the Federal Register, affirm or modify the amounts by December 31, 1983, after ccnsidering those comments.

"(2) A modification under paragraph (1) that reduces a prospective payment rate shall apply only to discharges occurring after 30 days after the date the notice of the modification is published in the Federal Register.

"(3) Rules to implement the amendments made by this title [amending sections 1320a-1, 1320c-2, 1395f, 1395i-2, 1395n, 1395r, 1395v, 1395w, 1395x, 1395y, 1395cc, 1395mm, 1395oo, 1395rr, 1395ww, and 1395xx of this title, enacting provisions set out as notes under sections 1395r and 1395x of this title, and amending provisions set out as a note under section 1395x of this title] shall be established in accordance with the procedure described in this subsection."

MAINTAINING CURRENT OUTLIER POLICY IN FISCAL YEAR 1987

Section 9302(b)(3) of Pub. L. 99-509 provided that: "For payments made under section 1886(d) of the Social Security Act [42 U.S.C. 1395ww(d)] for discharges occurring in fiscal year 1987—

"(A) the proportions under paragraph (3)(B) for hospitals located in urban and rural areas shall be established at such levels as produce the same total dollar reduction under such paragraph as if this section had not been enacted; and

"(B) the thresholds and standards used for making additional payments under paragraph (5) of such section shall be the same as those in effect as of October 1, 1986."

EXTENSION OF REGIONAL REFERRAL CENTER CLASSIFICATION

Section 9302(d)(2) of Pub. L. 99-509 provided that: "Any hospital that is classified as a regional referral center under section 1886(d)(5)(C)(i) of the Social Security Act [42 U.S.C. 1395ww(d)(5)(C)(i)] on the date of the enactment of this Act [Oct. 21, 1986] shall continue to be classified as a regional referral center for cost reporting periods beginning on or after October 1, 1986, and before October 1, 1989."

BUDGET-NEUTRAL IMPLEMENTATION

Section 9302(d)(3) of Pub. L. 99-509 provided that: "Paragraph (2) [set out as a note above] and the amendment made by paragraph (1)(A) [amending this section] shall be implemented in a manner that ensures that total payments under section 1886 of the Social Security Act [42 U.S.C. 1395ww] are not increased or decreased by reason of the classificatious required by such paragraph or amendment."

PROMULGATION OF NEW RATE

Section 9302(f) of Pub. L. 99-509 provided that: "The Secretary of Health and Human Services shall provide, within 30 days after the date of the enactment of this Act [Oct. 21, 1986], for the publication of the payments rates that will apply under section 1886 of the Social Security Act [42 U.S.C. 1395ww], for discharges occurring on or after October 1, 1986, taking into account the amendments made by this section [amending this section], without regard to the provisions of chapter 5 of title 5, United States Code."

MISCELLANEOUS ACCOUNTING PROVISION

Section 9307(d) of Pub. L. 99-509 provided that: "Effective on the date of the enactment of Public Law 99-107 [Sept. 30, 1985], in applying section 5(a) of such Act [set out as a noto below], a cost reporting period beginning on September 28, 29, or 30 is deemed to begin on October 1 and any reference to September 30 is deemed also to be a reference to September 27."

TREATMENT OF CAPITAL-RELATED REGULATIONS

Section 9321(c) of Pub. L. 99-509 provided that:

"(1) PROHIBITION OF ISSUANCE OF FINAL REGULATIONS ON CAPITAL-RELATED COSTS AS PART OF PAYMENT FOR OPERATING COSTS BEFORE SEPTEMBER 1, 1987.—Notwithstanding any other provision of law (except as provided in paragraph (3)), the Secretary of Health and Human Services may not issue, in final form, after September 1, 1986, and before September 1, 1987, any regulation that changes the methodology for computing the amount of payment for capital-related costs (as defined in paragraph (4)) for inpatient hospital services under part A of title XVIII of the Social Security Act [42 U.S.C. 1395c et seq.]. Any regulation published in violation of the previous sentence before the date of the enactment of this Act [Oct. 21, 1986] is void and of no effect.

"(2) NOT INCLUDING CAPITAL-RELATED REGULATIONS IN BUDGET BASELINE.—Any reference in law to a regulation

issued in final form or proposed by the Health Care Financing Administration pursuant to sections 1886(b)(3)(B), 1886(d)(3)(A), and 1886(e)(4) of the Social Security Act [42 U.S.C. 1395ww(b)(3)(B), (d)(3)(A), (e)(4)] shall not include any regulation issued or proposed with respect to capital-relatod costs (as defined in paragraph (4)).

"(3) EXCEPTION.—Paragraph (1) shall not apply to any regulation issued for the sole purpose of implementing section 1886(g)(3)(A) and (B) of the Social Security Act (as amended by section 9303(a) of this Act).

"(4) CAPITAL-RELATED COSTS DEFINED.—In this subsection, the term 'capital-related costs' means those capital-related costs that are specifically excluded, under the second sentence of 'operating costs of inpatient hospital services' (as defined in that section) for cost reporting periods beginning prior to October 1, 1987."

LIMITATION ON AUTHORITY TO ISSUE CERTAIN FINAL REGULATIONS AND INSTRUCTIONS RELATING TO HOSPITALS OR PHYSICIANS

Section 9321(d) of Pub. L. 99-509 provided that: "Notwithstanding any other provision of law, except as required to implement specific provisions required under statute and except as provided under subsection (c) [set out as a note above] with respect to a regulation described in that subsection, the Secretary of Health and Human Services is not authorized to issue in final form after the date of the enactment of this Act [Oct. 21, 1986] and before September 1, 1987, any regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] in fiscal year 1988 of more than $50,000,000, and which relates te hospitals or physicians."

STUDY OF METHODOLOGY FOR AREA WAGE ADJUSTMENT FOR CENTRAL CITIES; REPORT TO CONGRESS

Section 9103(b) of Pub. L. 99-272 provided that:

"(1) The Seeretary of Health and Human Services, in consultation with the Prospective Payment Assessment Commission, shall collect information and shall develop one or more methodologies to permit the adjustment of the wage indices used for purposes of sections 1886(d)(2)(C)(ii), 1866(d)(2)(H), and 1886(d)(3)(E) of the Social Security Act [42 U.S.C. 1395ww(d)(2)(C)(ii), (H), (3)(E)], in order to more accurately refleet hospital labor markets, by taking inte account variations in wages and wage-related costs between the central city portion of urban areas and other parts of urban areas.

"(2) The Secretary shall report to Congress on the information collected and the methodologies developed under paragraph (1) not later than May 1, 1987. The report shall include a recommendation as to the feasibility and desirability of implementing such methodologies."

CONTINUATION OF MEDICARE REIMBURSEMENT WAIVERS FOR CERTAIN HOSPITALS PARTICIPATING IN REGIONAL HOSPITAL REIMBURSEMENT DEMONSTRATIONS

Section 9108 of Pub. L. 99-272 provided that:

"(a) CONTINUATION OF WAIVERS.—A hospital reimbursement control system which, on January 1, 1985, was carrying out a demonstration under a contract which had been approved by the Secretary of Health and Human Services pursuant to section 222(a) of the Social Security Amendments of 1972 [section 222(a) of Pub. L. 92-603, set out as a note under section 1395b-1 of this title], or under section 402 of the Social Security Amendments of 1967 (as amended by section 222(b) of the Social Security Amendments of 1972) [42 U.S.C. 1395b-1], shall be deemed to meet the requirements of section 1886(c)(1)(A) of the Social Security Act [42 U.S.C. 1395ww(c)(1)(A)] if such system applies—

"(1) to substantially all non-Federal acute care hospitals (as defined by the Secretary) in the geographic area served by such system on January 1, 1985, and

"(2) to the review of at least 75 percent of—

"(A) all revenues or expenses in such geographic area for inpatient hospital services, and

"(B) revenues or expenses in such geographic area for inpatient hospital services provided under the State's plan approved under title XIX [42 U.S.C. 1396 et seq.].

"(b) APPROVAL.—In the case of a hospital cost control system described in subsection (a), the requirements of section 1886(c) of the Social Security Act [42 U.S.C. 1395ww(c)] which apply to States shall instead apply to such system and, for such purposes, any reference to a State is deemed a reference to such system.

"(c) EFFECTIVE DATE.—This section shall become effective on the date of the enactment of this Act [Apr. 7, 1986]."

INFORMATION ON IMPACT OF PPS PAYMENTS ON HOSPITALS

Section 9114 of Pub. L. 99-272 provided that:

"(a) DISCLOSURE OF INFORMATION.—The Secretary of Health and Human Services shall make available te the Prospective Payment Assessment Commission, the Congressional Budget Office, the Comptroller Oeneral, and the Congressional Researeh Service the most current information on the payments being made under seetion 1886 of the Social Security Act [42 U.S.C. 1395ww] to individual hospitals. Such information shall be made available in a manner that permits examination of the impact of such section on hospitals.

"(b) CONFIDENTIALITY.—Information disclosed under subsection (a) shall be treated as confidential and shall not be subject to further disclosure in a manner that permits the identification of individual hospitals."

SPECIAL RULES FOR IMPLEMENTATION OF HOSPITAL REIMBURSEMENT

Section 9115 of Pub. L. 99-272 provided that:

"(a) WAIVER OF PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply te information required for purposes of carrying out this subpart and implementing the amendments made by this subpart [subpart A (§§ 9101-9115) of part 1 of subtitle A of title IX of Pub. L. 99-272, see Tables for classification].

"(b) USE OF INTERIM FINAL REGULATIONS.—The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this subpart and the amcndments made by this subpart."

APPOINTMENT OF ADDITIONAL MEMBERS TO PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Section 9127(b) of Pub. L. 99-272, as amended by Pub. L. 99-514, title XVIII, § 1895(b)(6), Oct. 22, 1986, 100 Stat. 2933, provided that: "The Director of the Congressional Office of Technology Assessment shall appoint the two additional members of the Prospective Payment Assessment Commission, as required by the amendment made by subsection (a) [amending this section], no later than 60 days after the date of the enactment of this Act [Apr. 7, 1986], for terms of three years, except that the Director may provide initially for such terms as will insure that (on a continuing basis) the terms of no more than eight members will expire in any one year."

STUDIES BY SECRETARY; GAO STUDY; REPORT ON UNIFORMITY OF APPROVER FTE RESIDENT AMOUNTS; STUDY ON FOREIGN MEDICAL GRADUATES; ESTABLISHING PHYSICIAN IDENTIFIER SYSTEM; PAPERWORK REDUCTION

Section 9202(c)-(h) of Pub. L. 99-272 provided that:

"(c) STUDIES BY SECRETARY.—(1) The Secretary of Health and Human Services shall conduct a study with respect to approved educational activities relat-

ing to nursing and other health professions for which reimbursement is made to hospitals under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.]. The study shall address—

"(A) the types and numbers of such programs, and number of students supported or trained under each program;

"(B) the fiscal and administrative relationships between the hospitals involved and the schools with which the programs and students are affiliated; and

"(C) the types and amounts of expenses of such programs for which reimbursement is made, and the financial and other contributions which accrue to the hospital as a consequence of having such programs.

The Secretary shall report the results of such study to the Committee on Finance of the Senate and the Committees on Ways and Means and Energy and Commerce of the House of Representatives prior to December 31, 1987.

"(2) The Secretary shall conduct a separate study of the advisability of continuing or terminating the exception under section 1886(h)(5)(F)(ii) of the Social Security Act [42 U.S.C. 1395ww(h)(5)(F)(ii)] for geriatric residencies and fellowships, and of expanding such exception to cover other educational activities, particularly those which are necessary to meet the projected health care needs of Medicare beneficiaries. Such study shall also examine the adequacy of the supply of faculty in the field of geriatrics. The Secretary shall report the results of such study to the committees described in paragraph (1) prior to July 1, 1990.

"(d) GAO STUDY.—(1) The Comptroller General shall conduct a study of the variation in the amounts of payments made under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] with respect to patients in different teaching hospital settings and in the amounts of such payments which are made with respect to patients who are treated in teaching and nonteaching hospital settings. Such study shall identify the components of such payments (including payments with respect to inpatient hospital services, physicians' services, and capital costs, and, in the case of teaching hospital patients, payments with respect to direct and indirect teaching costs) and shall account, to the extent feasible, for any variations in the amounts of the payment components between teaching and nonteaching settings and among different teaching settings.

"(2) In carrying out such study, the Comptroller General may utilize a sample of hospital patients and any other data sources which he deems appropriate, and shall, to the extent feasible, control for differences in severity of illness levels, area wage levels, levels of physician reasonable charges for like services and procedures, and for other factors which could affect the comparability of patients and of payments between teaching and nonteaching settings and among teaching settings. The information obtained in the study shall be coordinated with the information obtained in conducting the study of teaching physicians' services under section 2307(c) of the Deficit Reduction Act of 1984 [section 2307(c) of Pub. L. 98-369, set out as a note under section 1395u of this title].

"(3) The Comptroller General shall report the results of the study to the committees described in subsection (c)(1) prior to December 31, 1987.

"(e) REPORT ON UNIFORMITY OF APPROVED FTE RESIDENT AMOUNTS.—The Secretary of Health and Human Services shall report to the committees described in subsection (c)(1), not later than December 31, 1987, on whether section 1886(h) of the Social Security Act [42 U.S.C. 1395ww(h)] should be revised to provide for greater uniformity in the approved FTE resident amounts established under paragraph (2) of that section, and, if so, how such revisions should be implemented.

"(f) STUDY ON FOREIGN MEDICAL GRADUATES.—The Secretary of Health and Human Services shall study, and report to the committees described in subsection (c)(1), not later than December 31, 1987, respecting the use of physicians who are foreign medical graduates (within the meaning of section 1886(h)(5)(D) of the Social Security Act [42 U.S.C. 1395ww(h)(5)(D)]) in the provision of health care services (particularly inpatient and outpatient hospital services) to medicare beneficiaries. Such study shall evaluate—

"(1) the types of services provided;

"(2) the cost of providing such services, relative to the cost of other physicians providing the services or other approaches to providing the services;

"(3) any deficiencies in the quality of the services provided, and methods of assuring the quality of such services; and

"(4) the impact on costs of and access to services if medicare payment for hospitals' costs of graduate medical education of foreign medical graduates were phased out.

"(g) ESTABLISHING PHYSICIAN IDENTIFIER SYSTEM.—The Secretary of Health and Human Services shall establish a system, for implementation not later than July 1, 1987, which provides for a unique identifier for each physician who furnishes services for which payment may be made under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.].

"(h) PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this section and the amendments made by this section [amending sections 1395x and 1395ww of this title and enacting notes set out under sections 1395x and 1395ww of this title]."

SPECIAL TREATMENT OF STATES FORMERLY UNDER WAIVER

Section 9202(j) of Pub. L. 99-272, as amended by Pub. L. 99-514, title XVIII, § 1895(b)(10), Oct. 22, 1986, 100 Stat. 2933, provided that: "In the case of a hospital in a State that has had a waiver approved under section 1886(c) of the Social Security Act [42 U.S.C. 1395ww(c)] or section 402 of the Social Security Amendments of 1967 [42 U.S.C. 1395b-1], for cost reporting periods beginning on or after January 1, 1986, if the waiver is terminated—

"(1) the Secretary of Health and Human Services shall permit the hospital to change the method by which it allocates administrative and general costs to the direct medical education cost centers to the method specified in the medicare cost report;

"(2) the Secretary may make appropriate adjustments in the regional adjusted DRG prospective payment rate (for the region in which the State is located), based on the assumption that all teaching hospitals in the State use the medicare cost report; and

"(3) the Secretary shall adjust the hospital-specific portion of payment under section 1886(d) of such Act [42 U.S.C. 1395ww(d)] for any such hospital that actually chooses to use the medicare cost report.

The Secretary shall implement this subsection based on the best available data."

MORATORIUM ON LABORATORY PAYMENT DEMONSTRATIONS; COOPERATION IN STUDY; REPORT TO CONGRESS

Section 9204 of Pub. L. 99-272, as amended by Pub. L. 99-509, title IX, § 9339(e), Oct. 21, 1986, 100 Stat. 2037, provided that:

"(a) MORATORIUM.—Prior to January 1, 1988, the Secretary of Health and Human Services shall not conduct any demonstration projects relating to competitive bidding as a method of purchasing laboratory services under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.]. The Secretary may contract for the design of, and site selection for, such demonstration projects.

"(b) COOPERATION IN STUDY.—The Secretary of Health and Human Services and the Comptroller Gen-

eral shall assist representatives of clinical laboratories in the industry's conduct of a study to determine whether methods exist which are better than competitive bidding for purposes of utilizing competitive market forces in setting payment levels for laboratory services under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.]. If such a study is conducted by the clinical laboratory industry, the Secretary and the Comptroller General shall comment on such study and submit such comments and the study to the Senate Committee on Finance and the House Committees on Ways and Means and Energy and Commerce."

MEDICARE HOSPITAL AND PHYSICIAN PAYMENT PROVISIONS; EXTENSION PERIOD

Pub. L. 99-107, § 5, Sept. 30, 1985, 99 Stat. 479, as amended by Pub. L. 99-155, § 2(d), Nov. 14, 1985, 99 Stat. 814; Pub. L. 99-181, § 4, Dec. 13, 1985, 99 Stat. 1172; Pub. L. 09-189, § 4, Dec. 18, 1985, 99 Stat. 1184; Pub. L. 99-201, § 2, Dec. 23, 1985, 99 Stat. 1665; Pub. L. 99-272, title IX, §§ 9101(a), 9301(a), Apr. 7, 1986, 100 Stat. 153, 184, provided that:

"(a) MAINTAINING EXISTING HOSPITAL PAYMENT RATES.—Notwithstanding any other provision of law, the amount of payment under section 1886 of the Social Security Act [42 U.S.C. 1395ww] for inpatient hospital services for discharges occurring (and cost reporting periods beginning) during the extension period (as defined in subsection (c)) shall be determined on the same basis as the amount of payment for such services for a discharge occurring on (or the cost reporting period beginning immediately on or before) September 30, 1985.

"(b) MAINTAINING EXISTING PAYMENT RATES FOR PHYSICIANS' SERVICES.—Notwithstanding any other provision of law, the amount of payment under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.] for physicians' services which are furnished during the extension period (as defined in subsection (c)) shall be determined on the same basis as the amount of payment for such services furnished on September 30, 1985, and the 15-month period, referred to in section 1842(j)(1) of such Act [42 U.S.C. 1395u(j)(1)], shall be deemed to include the extension period.

"(c) EXTENSION PERIOD DEFINED.—

"(1) HOSPITAL PAYMENTS.—For purposes of subsection (a), the term 'extension period' means the period beginning on October 1, 1985, and ending on April 30, 1986.

"(2) PHYSICIAN PAYMENTS.—For purposes of subsection (b), the term 'extension period' means the period beginning on October 1, 1985, and ending on April 30, 1986."

[Amendment of this note by section 9101(a) of Pub. L. 99-272 effective Mar. 15, 1986, see section 0101(d) of Pub. L. 99-272, set out above.]

FINAL REGULATIONS TO CARRY OUT SUBSECTION (c) OF THIS SECTION

Section 2315(f)(2) of Pub. L. 98-369 provided that: "Notwithstanding section 604(c) of the Social Security Amendments of 1983 [section 604(c) of Pub. L. 98-21, set out as a note above], the Secretary of Health and Human Services shall cause to be published in the Federal Register proposed regulations to carry out subsection (c) of section 1886 of the Social Security Act [subsec. (c) of this section] not later than July 1, 1984, and allow for a period of 45 days for public comment thereon. After consideration of the comments received, the Secretary shall cause to be published in the Federal Register final regulations to carry out such subsection not later than October 1, 1984."

DEFINITION OF HOSPITAL SERVING SIGNIFICANTLY DISPROPORTIONATE NUMBER OF LOW-INCOME PATIENTS OR PATIENTS ENTITLED TO HOSPITAL INSURANCE BENEFITS FOR AGED AND DISABLED; IDENTIFICATION

Section 2315(h) of Pub. L. 98-369 provided that: "The Secretary of Health and Human Services shall, prior to December 31, 1984—

"(1) develop and publish a definition of 'hospitals that serve a significantly disproportionate number of patients who have low income or are entitled to benefits under part A' of title XVIII of the Social Security Act [part A of this subchapter] for purposes of section 1886(d)(5)(C)(i) of that Act [subsec. (d)(5)(C)(i) of this section], and

"(2) identify those hospitals which meet such definition, and make such identity available to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate."

PROSPECTIVE PAYMENT WAGE INDEX; STUDIES AND REPORTS TO CONGRESS

Section 2316 of Pub. L. 98-369, as amended by Pub. L. 99-272, title IX, § 9103(a)(1), Apr. 7, 1986, 100 Stat. 156, provided that:

"(a) The Secretary of Health and Human Services, in consultation with the Secretary of Labor, shall conduct a study to develop an appropriate index for purposes of adjusting payment amounts under section 1886(d) of the Social Security Act [subsec. (d) of this section] to reflect area differences in average hospital wage levels, as required under paragraphs (2)(H) and (3)(E) of such section [subsec. (d)(2)(H), (3)(E) of this section], taking into account wage differences of full time and part time workers. The Secretary of Health and Human Services shall report the results of such study to the Congress not later than 30 days after the date of the enactment of this Act [July 18, 1984], including any changes which the Secretary determines to be necessary to provide for an appropriate index.

"(b) The Secretary shall adjust the payment amounts for hospitals for discharges occurring on or after May 1, 1986, to reflect the changes the Secretary has promulgated in final regulations (on September 3, 1985) relating to the hospital wage index under section 1886(d)(3)(E) of the Social Security Act [subsec. (d)(3)(E) of this section]. For discharges occurring after September 30, 1986, the Secretary shall provide for such periodic adjustments in the appropriate wage index used under that section as may be necessary, taking into account changes in the wage levels and relative proportions of full-time and part-time workers.

"(c) The Secretary shall conduct a study and report to the Congress on proposed criteria under which, in the case of a hospital that demonstrates to the Secretary in a current fiscal year that the adjustment being made under paragraph (2)(H) or (3)(E) of section 1886(d) of the Social Security Act [subsec. (d)(2)(H) or (3)(E) of this section] for that hospital's discharges in that fiscal year does not accurately reflect the wage levels in the labor market serving the hospital, the Secretary, to the extent he deems appropriate, would modify such adjustment for that hospital for discharges in the subsequent fiscal year to take into account a difference in payment amounts in that current fiscal year to the hospital that resulted from such inaccuracy."

[Section 9103(a)(2) of Pub. L. 99-272 provided that: "The amendment made by paragraph (1) [amending this note] shall be effective as if it had been included in the Deficit Reduction Act of 1984 [Pub. L. 98-369]."]

DIFFERENT TREATMENT OF CAPITAL-PROJECTS-RELATED COSTS BEFORE AND AFTER IMPLEMENTATION OF SYSTEM FOR INCLUDING SUCH COSTS UNDER PROSPECTIVELY DETERMINED PAYMENT RATE

Section 601(a)(3) of Pub. L. 98-21 provided that: "It is the intent of Congress that, in considering the implementation of a system for including capital-related costs under a prospectively determined payment rate for inpatient hospital services, costs related to capital projects for which expenditures are obligated on or after the effective date of the implementation of such a system, may or may not be distinguished and treated differently from costs of projects for which expenditures were obligated before such date."

NEW ENGLAND HOSPITALS; CLASSIFICATION AS URBAN OR RURAL

Section 601(g) of Pub. L. 98-21 provided that: "In determining whether a hospital is in an urban or rural area for purposes of section 1886(d) of the Social Security Act [subsec. (d) of this section], the Secretary of Health and Human Services shall classify any hospital located in New England as being located in an urban area if such hospital was classified as being located in an urban area under the Standard Metropolitan Statistical Area system of classification in effect in 1979."

REPORTS, EXPERIMENTS, AND DEMONSTRATION PROJECTS RELATED TO INCLUSION IN PROSPECTIVE PAYMENT AMOUNTS OF INPATIENT HOSPITAL SERVICE CAPITAL-RELATED COSTS

Section 603(a) of title VI of Pub. L. 98-21, as amended by Pub. L. 98-369, div. B, title III, § 2317, July 18, 1984, 98 Stat. 1081; Pub. L. 99-509, title IX, § 9305(i)(1), Oct. 21, 1986, 100 Stat. 1993, provided that:

"(1) The Secretary of Health and Human Services (hereinafter in this title referred to as the 'Secretary') shall study, develop, and report to the Congress within 18 months after the date of the enactment of this Act [Apr. 20, 1983] on the method and proposals for legislation by which capital-related costs, such as return on net equity, associated with inpatient hospital services can be included within the prospective payment amounts computed under section 1886(d) of the Social Security Act [42 U.S.C. 1395ww(d)].

"(2)(A) The Secretary shall study and report annually to the Congress at the end of each year (beginning with 1984 and ending with 1989) on the impact, of the payment methodology under section 1886(d) of the Social Security Act [42 U.S.C. 1395ww(d)] during the previous year, on classes of hospitals, beneficiaries, and other payors for inpatient hospital services, and other providers, and, in particular, on the impact of computing DRG prospective payment rates by census division, rather than exclusively on a national basis. Each such report shall include such recommendations for such changes in legislation as the Secretary deems appropriate.

"(B) During fiscal year 1984, the Secretary shall begin the collection of data necessary to compute the amount of physician charges attributable, by diagnosis-related groups, to physicians' services furnished to inpatients of hospitals whose discharges are classified within those groups. The Secretary shall submit to Congress, not later than July 1, 1985, a report to Congress which includes recommendations on the advisability and feasibility of providing for determining the amount of the payments for physicians' services furnished to hospital inpatients based on the DRG type classification of the discharges of those inpatients, and legislative recommendations thereon.

"(C) In the annual report to Congress under subparagraph (A) for 1985, the Secretary shall include the results of studies on—

"(i) the feasibility and impact of climinating or phasing out separate urban and rural DRG prospective payment rates under paragraph (3) of section 1886(d) of the Social Security Act [42 U.S.C. 1395ww(d)(3)];

"(ii) whether and the method under which hospitals, not paid based on amounts determined under such section, can be paid for inpatient hospital services on a prospective basis as under such section;

"(iii) the appropriateness of the factors used under paragraph (5)(A) of such section to compensate hospitals for the additional expenses of outlier cases, and the application of severity of illness, intensity of care, or other modifications to the diagnosis-related groups, and the advisability and feasibility of providing for such modifications;

"(iv) the feasibility and desirability of applying the payment methodology under such section to payment by all payors for inpatient hospital services; and

"(v) the impact of such section on hospital admissions and the feasibility of making a volume adjustment in the DRG prospective payment rates or requiring preadmission certification in order to minimize the ineentive to increase admissions.

Such report shall specifically include, with respect to the item described in clause (iv), consideration of the extent of cost-shifting to non-Federal payors and the impact of such cost-shifting on health insurance costs and premiums borne by employers and employees.

"(D) In the annual report to Congress under subparagraph (A) for 1986, the Secretary shall include the results of a study examining the overall impact of State systems of hospital payment (either approved under section 1886(c) of the Social Security Act [42 U.S.C. 1395ww(c)] or under a waiver approved under section 402(a) of the Social Security Amendments of 1967 [42 U.S.C. 1395b-1(a)] or section 222(a) of the Social Security Amendments of 1972) [Pub. L. 92-603, set out as a note under 1395b-1 of this title], particularly assessing such systems' impact not only on the medicare program but also on the medicaid program, on payments and premiums under private health insurance plans, and on tax expenditures.

"(E) In each annual report to Congress under subparagraph (A), the Secretary shall include—

"(i) an evaluation of the adequacy of the procedures for assuring quality of post-hospital services furnished under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.],

"(ii) an assessment of problems that have prevented groups of medicare beneficiaries (including those eligible for medical assistance under title XIX of such Act [42 U.S.C. 1396 et seq.]) from receiving appropriate post-hospital services covered under such title, and

"(iii) information on reconsiderations and appeals taken under title XVIII of such Act [42 U.S.C. 1395 et seq.] with respect to payment for post-hospital services.

"(3)(A) The Secretary shall complete a study and make legislative recommendations to the Congress with respect to an equitable method of reimbursing sole community hospitals which takes into account their unique vulnerability to substantial variations in occupancy.

"(B) In addition, the Secretary shall examine ways to coordinate an information transfer between parts A and B of title XVIII of the Social Security Act [42 U.S.C. 1395c et seq., 1395j et seq.], particularly with respect to those cases where a denial of coverage is made under part A of such title and no adjustment is made in the reimbursement to the admitting physician or physicians.

"(C) The Secretary shall also report on the appropriate treatment of uncompensated care costs, and adjustments that might be appropriate for large teaching hospitals located in rural areas.

"(D) The Secretary shall also report on the advisability of having hospitals make available information on the cost of care to patients financed by both public programs and private payors.

"(E) The studies and reports described in this paragraph shall be completed and submitted not later than April 1, 1985.

"(4) The Secretary shall complete a study and make recommendations to the Congress, before April 1, 1984, with respect to a method for including hospitals located outside of the fifty States and the District of Columbia under a prospective payment system."

[Section 9305(1)(2) of Pub. L. 99-509 provided that: "The amendment made by paragraph (1)(B) [amending this note] shall apply to reports for years beginning with 1986."]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395d, 1395e, 1395f, 1395g, 1395*l*, 1395n, 1395x, 1395y, 1395w-1, 1395cc, 1395mm, 1395*oo*, 1395rr, 1395xx, 1395yy of this title; title 2 section 991; title 10 section 1101.

§ 1395xx. Payment of provider-based physicians and payment under certain percentage arrangements

(a) Criteria; amount of payments

(1) The Secretary shall by regulation determine criteria for distinguishing those services (including inpatient and outpatient services) rendered in hospitals or skilled nursing facilities—

[*See main edition for text of* (A)]

(B) which constitute professional services which are rendered for the general benefit to patients in a hospital or skilled nursing facility and which may be reimbursed only on a reasonable cost basis or on the bases described in section 1395ww of this title.

[*See main edition for text of* (2); (b)]

(As amended Apr. 20, 1983, Pub. L. 98-21, title VI, § 602(j), 97 Stat. 165.)

AMENDMENTS

1983—Subsec. (a)(1)(B). Pub. L. 98-21 inserted "or on the bases described in section 1395ww of this title".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after Nov. 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98-21, set out as a note under section 1395ww of this title.

§ 1395yy. Payment to skilled nursing facilities for routine service costs

(a) Per diem limitations

The Secretary, in determining the amount of the payments which may be made under this subchapter with respect to routine service costs of extended care services shall not recognize as reasonable (in the efficient delivery of health services) per diem costs of such services to the extent that such per diem costs exceed the following per diem limits, except as otherwise provided in this section:

(1) With respect to freestanding skilled nursing facilities located in urban areas, the limit shall be equal to 112 percent of the mean per diem routine service costs for freestanding skilled nursing facilities located in urban areas.

(2) With respect to freestanding skilled nursing facilities located in rural areas, the limit shall he equal to 112 percent of the mean per diem routine service costs for freestanding skilled nursing facilities located in rural areas.

(3) With respect to hospital-based skilled nursing facilities located in urban areas, the limit shall be equal to the sum of the limit for freestanding skilled nursing facilities located in urban areas, plus 50 percent of the amount by which 112 percent of the mean per diem routine service costs for hospital-based skilled nursing facilities located in urban areas exceeds the limit for freestanding skilled nursing facilities located in urban areas.

(4) With respect to hospital-based skilled nursing facilities located in rural areas, the limit shall be equal to the sum of the limit for freestanding skilled nursing facilities located in rural areas, plus 50 percent of the amount by which 112 percent of the mean per diem routine service costs for hospital-based skilled nursing facilities located in rural areas exceeds the limit for freestanding skilled nursing facilities located in rural areas.

In applying this subsection the Secretary shall make appropriate adjustments to the labor related portion of the costs based upon an appropriate wage index.

(b) Exception to limitations for hospital-based skilled nursing facility

With respect to a hospital-based skilled nursing facility, the Secretary shall recognize as reasonable the portion of the cost differences between hospital-based and freestanding skilled nursing facilities attributable to excess overhead allocations (as determined by the Secretary) resulting from the reimbursement principles under this subchapter, notwithstanding the limits set forth in paragraph (3) or (4) of subsection (a) of this section.

(c) Adjustments in limitations; publication of data

The Secretary may make adjustments in the limits set forth in subsection (a) of this section with respect to any skilled nursing facility to the extent the Secretary deems appropriate, based upon case mix or circumstances beyond the control of the facility. The Secretary shall publish the data and criteria to be used for purposes of this subsection on an annual basis.

(d) Access to skilled nursing facilities

(1) Any skilled nursing facility may choose to be paid under this subsection on the basis of a prospective payment for all routine service costs (and capital-related costs) of extended care services provided in a cost reporting period if such facility had, in the preceding cost reporting period, fewer than 1,500 patient days with respect to which payments were made under this subchapter. Such prospective payment shall be in lieu of payments which would otherwise be made for routine service costs pursuant to section 1395x(v) of this title and subsections (a) through (c) of this section and capital-related costs pursuant to section 1395x(v) of this title. This subsection shall not apply to a facility for any cost reporting period immedi-

ately following a cost reporting period in which such facility had 1,500 or more patient days with respect to which payments were made under this subchapter, without regard to whether payments were made under this subsection during such preceding cost reporting period.

(2)(A) The amount of the payment under this section shall be determined on a per diem basis.

(B) Subject to the limitations of subparagraph (C), for skilled nursing facilities located—

(i) in an urban area, the amount shall be equal to 105 percent of the mean of the per diem reasonable routine service and capital-related costs of extended care services for skilled nursing facilities in urban areas within the same region, determined without regard to the limitations of subsection (a) of this section and adjusted for different area wage levels, and

(ii) in a rural area the amount shall be equal to 105 percent of the mean of the per diem reasonable routine service and capital-related costs of extended care services for skilled nursing facilities in rural areas within the same region, determined without regard to the limitations of subsection (a) of this section and adjusted for different area wage levels.

(C) The per diem amounts determined under subparagraph (B) shall not exceed the limit on routine service costs determined under subsection (a) of this section with respect to the facility, adjusted to take into account average capital-related costs with respect to the type and location of the facility.

(3) For purposes of this subsection, urban and rural areas shall be determined in the same manner as for purposes of subsection (a) of this section, and the term "region" shall have the same meaning as under section 1395ww(d)(2)(D) of this title.

(4) The Secretary shall establish the prospective payment amounts for cost reporting periods beginning in a fiscal year at least 90 days prior to the beginning of such fiscal year, on the basis of the most recent data available for a 12-month period. A skilled nursing facility must notify the Secretary of its intention to be paid pursuant to this subsection for a cost reporting period no later than 30 days before the beginning of that period.

(5) The Secretary shall provide for a simplified cost report to be filed by facilities being paid pursuant to this subsection, which shall require only the cost information necessary for determining prospective payment amounts pursuant to paragraph (2) and reasonable costs of ancillary services.

(6) In lieu of payment on a cost basis for ancillary services provided by a facility which is being paid pursuant to this subsection, the Secretary may pay for such ancillary services on a reasonable charge basis if the Secretary determines that such payment basis will provide an equitable level of reimbursement and will ease the reporting burden of the facility.

(Aug. 14, 1935, ch. 531, title XVIII, § 1888, as added July 18, 1984, Pub. L. 98-369, div. B, title III, § 2319(b), 98 Stat. 1082, and amended Apr. 7, 1986, Pub. L. 99-272, title IX, §§ 9126(a), (b), 9219(b)(1)(C), 100 Stat. 168, 170, 182; Oct. 22, 1986, Pub. L. 99-514, title XVIII, § 1895(b)(7)(A), (B), 100 Stat. 2933.)

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-272, § 9219(b)(1)(C), substituted "notwithstanding" for "nothwithstanding".

Subsec. (c). Pub. L. 99-272, § 9126(b), inserted provision requiring the Secretary to publish data and criteria to be used for purposes of this subsection on an annual basis.

Subsec. (d). Pub. L. 99-272, § 9126(a), added subsec. (d).

Subsec. (d)(1). Pub. L. 99-514, § 1695(b)(7)(A), substituted "cost reporting period" for "fiscal year" in five places.

Subsec. (d)(4). Pub. L. 99-514, § 1895(b)(7)(B), substituted "cost reporting periods beginning in a fiscal year" for "each fiscal year" and "cost reporting period no lator than 30 days before the beginning of that period" for "fiscal year within 60 days after the Secretary establishes the final prospective payment amounts for such fiscal year".

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 1895(b)(7)(D) of Pub. L. 99-514 providod that: "The amendments made by subparagraphs (A) and (B) [amending this section] apply to cost reporting periods beginning on or after October 1, 1986."

Amendment by section 9219(b)(1)(C) of Pub. L. 99-272 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98-369, see section 9219(b)(1)(D) of Pub. L. 99-272, set out as a note under section 1395u of this title.

Section 9126(d) of Pub. L. 99-272, as amended by Pub. L. 99-514, title XVIII, § 1895(b)(7)(C), Oct. 22, 1986, 100 Stat. 2933, provided that:

"(1) The amendment made by subsection (a) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1986.

"(2) The amendment made by subsection (b) [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986]."

EFFECTIVE DATE

Section 2319(c) of Pub. L. 98-369 provided that: "The amendments made by subsections (a) [amending section 1395x of this title] and (b) [enacting this section] shall apply to cost reporting periods beginning on or after July 1, 1984."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1395x of this title.

§ 1395zz. Purchase of durable medical equipment

(a) Lease-purchase basis or rental; determination by Secretary

In the case of durable medical equipment to be furnished an individual, the Secretary shall determine, on the basis of such medical and other evidence as he finds appropriate (including certification by the attending physician with respect to expected duration of need), whether the expected duration of the medical need for the equipment warrants a presumption that purchase of the equipment would be less costly or more practical than rental. If the Secretary determines that such a presumption does exist, he shall require that the equipment be purchased, on a lease-purchase basis or otherwise, and shall make payment in accord-

ance with the lease-purchase agreement (or in a lump sum amount if the equipment is purchased other than on a lease-purchase basis); except that the Secretary may authorize the rental of the equipment notwithstanding such determination if he determines that the purchase of the equipment would be inconsistent with the purposes of this subchapter or would create an undue financial hardship on the individual who will use it.

(b) Waiver of coinsurance amount in purchase of used equipment

With respect te purchases of used durable medical equipment, the Secretary may waive any coinsurance amount applicable whenever the purchase price of the used equipment is at least 25 pereent less than the reasonable charge for comparable new equipment.

(c) Reimbursement procedures

For purposes of subsection (a) of this section, the Secretary may, pursuant to agreements made with suppliers of durable medical equipment, establish reimbursement procedures which he finds to be equitable, economical, and feasible.

(d) Encouragement of lease-purchase basis

The Secretary shall encourage suppliers of durable medical equipment to make their equipment available to individuals entitled to benefits under this subchapter on a lease-purchase basis whenever possible.

(Aug. 14, 1935, ch. 531, title XVIII, § 1889, formerly § 1833(f), as added Jan. 2, 1968, Pub. L. 90-248, title I, § 132(b), 81 Stat. 850, and amended Oct. 30, 1972, Pub. L. 92-603, title II, § 245(d), 86 Stat. 1424; Oct. 25, 1977, Pub. L. 95-142, § 16(a), 91 Stat. 1200; renumbered § 1889 and amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2321(d), 98 Stat. 1084.)

CODIFICATION

Section was formerly set out as subsec. (f) of section 1395*l* of this title prior to its renumbering and transfer by Pub. L. 98-369.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 2321(d)(4)(B), redesignated par. (1) of section 1395*l*(f) of this title as subsec. (a).

Pub. L. 98-369, § 2321(d)(1), struck out "as described in section 1395x(s)(6) of this title" after "furnished an individual".

Subsec. (b). Pub. L. 93-369, § 2321(d)(4)(B), redesignated par. (2) of section 1395*l*(f) of this title as subsec. (b).

Pub. L. 98-369, § 2321(d)(2), substituted "any" for "the 20 percent" and struck out "under subsection (a) of this section" after "amount applicable".

Subsec. (c). Pub. L. 98-369, § 2321(d)(4)(B), redesignated par. (3) of section 1395*l*(f) of this title as subsec. (c).

Pub. L. 98-389, § 2321(d)(3), substituted "subsection (a) of this section" for "paragraph (1)".

Subsec. (d). Pub. L. 98-369, § 2321(d)(4)(B), redesignated par. (4) of section 1395*l*(f) of this title as subsec. (d).

1977—Par. (1). Pub. L. 95-142 substituted provisions relating to determinations by the Secretary with respect to presumptions regarding the purchase price or practicality of buying or renting durable medical equipment, for provisions relating to the purchase price of durable medical equipment authorized to be paid by the Secretary.

Par. (2). Pub. L. 95-142 substituted provisions relating to waiver of the coinsurance amount in the purchase of used durable medical equipment, for provisions relating to reimbursement procedures established by the Secretary in cases of rental of durable medical equipment.

Pars. (3), (4). Pub. L. 95-142 added pars. (3) and (4).

1972—Pub. L. 92-603 designated existing provisions as par. (1)(A) and added pars. (1)(B) and (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to items and services furnished on or after July 18, 1984, see section 2321(g) of Pub. L. 98-369, set out as a note under section 1395*l* of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-142 applicable with respect to durable medical equipment purchased or rented on or after Oct. 1, 1977, see section 16(b) of Pub. L. 95-142, set out as a note under section 1395*l* of this title.

EFFECTIVE DATE

Section applicable only with respect to items purchased after Dec. 31, 1967, see section 132(c) of Pub. L. 90-248, set out as an Effective Date of 1968 Amendment note under section 1395*l* of this title.

SUBCHAPTER XIX—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 242b, 254b, 254c, 254e, 254h, 254n, 300e, 300e-6, 300x-4, 300z-5, 602, 603, 608, 614, 632a, 652, 871, 672, 673, 705, 709, 1801, 1306, 1308, 1309, 1310, 1315, 1316, 1318, 1320a-1, 1320a-2, 1320a-3, 1320a-5, 1320a-7, 1320a-7a, 1320a-6, 1320b-2, 1320b-3, 1320b-4, 1320b-5, 1320b-7, 1320b-8, 1320c-2, 1320c-10, 1382, 1382g, 1382h, 1382l, 1383c, 1395b-1, 1395u, 1395v, 1395w-1, 1395x, 1395y, 1395z, 1395cc, 1395mm, 1395tt, 1395vv, 1395ww, 1997, 3013, 3026, 3035b, 6024, 8824, 10805 of this title; title 7 sections 2017, 3178; title 8 sections 1255a, 1522; title 10 sections 1079, 1095; title 12 sections 1715w, 1715z-7; title 20 sections 1413, 1481; title 24 section 170a; title 25 section 1622; title 26 section 6103; title 29 section 1144; title 38 sections 622, 629, 4108.

§ 1396. Appropriations

For the purpose of enabling each State, as far as practicable under the conditions in such State, to furnish (1) medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services, and (2) rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for medical assistance.

(Aug. 14, 1935, ch. 531, title XIX, § 1901, as added July 30, 1965, Pub. L. 89-97, title I, § 121(a), 79 Stat. 343, and amended Dec. 31, 1973, Pub. L. 93-233, § 13(a)(1), 87 Stat. 960; July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(j)(3)(C), 98 Stat. 1171.)

AMENDMENTS

1984—Pub. L. 98-369 struck out "Health, Education, and Welfare" after "Secretary".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 1396a. State plans for medical assistance

(a) Contents

A State plan for medical assistance must—

[*See main edition for text of (1) to (8)*]

(9) provide—

(A) that the State health agency, or other appropriate State medical agency (whichever is utilized by the Secretary for the purpose specified in the first sentence of section 1395aa(a) of this title), shall be responsible for establishing and maintaining health standards for private or public institutions in which recipients of medical assistance under the plan may receive care or services,

(B) for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards, other than those relating to health, for such institutions, and

(C) that any laboratory services paid for under such plan mnst be provided by a laboratory which meets the applicable requirements of section 1395x(e)(9) of this title or paragraphs (12) and (13) of section 1395x(s) of this title, or, in the case of a laboratory which is in a rural health clinic, of section 1395x(aa)(2)(G) of this title;

(10) provide—

(A) for making medical assistance available, including at least the care and services listed in paragraphs (1) through (5) and (17) of section 1396d(a) of this title, to—

(i) all individuals—

(I) who 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 or part E of subchapter IV of this chapter (including individuals eligible under this subchapter by reason of section 602(a)(37), 606(h), or 673(b) of this title, or considered by the State to be receiving such aid as authorized under section 614(g) of this title),

(II) with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter or who are qualified severely impaired individuals (as defined in section 1396d(q) of this title), or

(III) who are qualified pregnant women or children as defined in section 1396d(n) of this title; [1]

(ii) at the option of the State, to any group or groups of individuals described in section 1396d(a) of this title (or, in the case of individuals described in section 1396d(a)(i) of this title, to any reasonable categories of such individuals) who are not individuals described in clause (i) of this subparagraph but—

[*See main edition for text of (I) to (IV)*]

(V) who are in a medical institution for a period of not less than 30 consecutive days (with eligibility by reason of this subclause beginning on the first day of such period), who meet the resource requirements of the appropriate State plan described in clause (i) or the supplemental security income program, and whose income does not exceed a separate income standard established by the State which is consistent with the limit established under section 1396b(f)(4)(C) of this title,

(VI) who would be eligible under the State plan under this subchapter if they were in a medical institution, with respect to whom there has been a determination that but for the provision of home or community-based services described in section 1396n(c) of this title they would require the level of care provided in a hospital, skilled nursing facility or intermediate care facility the cost of which could be reimbursed under the State plan, and who will receive home or community-based services pursuant to a waiver granted by the Secretary under section 1396n(c) of this title,

(VII) who would be eligible under the State plan under this subchapter if they were in a medical institution, who are terminally ill, and who will receive hospice care pursuant to a voluntary election described in section 1396d(o) of this title; [2]

(VIII) who is a child described in section 1396d(a)(i) of this title—

(aa) for whom there is in effect an adoption assistance agreement (other than an agreement under part E of subchapter IV of this chapter) between the State and an adoptive parent or parents,

(bb) who the State agency responsible for adoption assistance has determined cannot be placed with adoptive parents without medical assistance because such child has special needs for medical or rehabilitative care, and

(cc) who was eligible for medical assistance under the State plan prior to the adoption assistance agreement being entered into, or who would have been eligible for medical assistance at such time if the eligibility standards and methodologies of the State's foster care program under part E of

[1] So in original. Probably should be followed by "and".

[2] So in original. The semicolon probably should be a comma.

subchapter IV of this chapter were applied rather than the eligibility standards and methodologies of the State's aid to families with dependent children program under part A of subchapter IV of this chapter; [1]

(IX) subject to subsection (*l*)(4) of this section, who are described in subsection (*l*)(1) of this section, or

(X) subject to subsection (m)(3) of this section, who are described in subsection (m)(1) of this section;

[*See main edition for text of* (*B*)]

(C) that if medical assistance is included for any group of individuals described in section 1396d(a) of this title who are not described in subparagraph (A) or (E), then—

[*See main edition for text of* (*i*) *to* (*iii*)]

(iv) if such medical assistance includes services in institutions for mental diseases or intermediate care facility services for the mentally retarded (or both) for any such group, it also must include for all groups covered at least the care and services listed in paragraphs (1) through (5) and (17) of section 1396d(a) of this title or the care and services listed in any 7 of the paragraphs numbered (1) through (20) of such section;

(D) for the inclusion of home health services for any individual who, under the State plan, is entitled to skilled nursing facility services; and

(E) at the option of a State, but subject to subsection (m)(3) of this section, for making medical assistance available for medicare cost-sharing (as defined in section 1396d(p)(3) of this title) for qualified medicare beneficiaries described in section 1396d(p)(1) of this title;

except that (I) the making available of the services described in paragraph (4), (14), or (16) of section 1396d(a) of this title to individuals meeting the age requirements prescribed therein shall not, by reason of this paragraph (10), require the making available of any such services, or the making available of such services of the same amount, duration, and scope, to individuals of any other ages, (II) the making available of supplementary medical insurance benefits under part B of subchapter XVIII of this chapter to individuals eligible therefor (either pursuant to an agreement entered into under section 1395v of this title or by reason of the payment of premiums under such subchapter by the State agency on behalf of such individuals), or provision for meeting part or all of the cost of deductibles, cost sharing, or similar charges under part B of subchapter XVIII of this chapter for individuals eligible for benefits under such part, shall not, by reason of this paragraph (10), require the making available of any such benefits, or the making available of services of the same amount, duration, and scope, to any other individuals, (III) the making available of medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in clause (A) to any classification of individuals approved by the Secretary 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 shall not, by reason of this paragraph (10), require the making available of any such assistance, or the making available of such assistance of the same amount, duration, and scope, to any other individuals not described in clause (A), (IV) the imposition of a deductible, cost sharing, or similar charge for any item or service furnished to an individual not eligible for the exemption under section 1396*o*(a)(2) or (b)(2) of this title shall not require the imposition of a deductible, cost sharing, or similar charge for the same item or service furnished to an individual who is eligible for such exemption, (V) the making available to pregnant women covered under the plan of services relating to pregnancy (including prenatal, delivery, and postpartum services) or to any other condition which may complicate pregnancy shall not , by reason of this paragraph (10), require the making available of such services, or the making available of such services of the same amount, duration, and scope, to any other individuals, provided such services are made available (in the same amount, duration, and scope) to all pregnant women covered under the State plan, (VI) with respect to the making available of medical assistance for hospice care to terminally ill individuals who have made a voluntary election described in section 1396d(o) of this title to receive hospice care instead of medical assistance for certain other services, such assistance may not be made available in an amount, duration, or scope less than that provided under subchapter XVIII of this chapter, and the making available of such assistance shall not, by reason of this paragraph (10), require the making available of medical assistance for hospice care to other individuals or the making available of medical assistance for services waived by such terminally ill individuals, (VII) the medical assistance made available to an individual described in subsection (*l*)(1)(A) of this section who is eligible for medical assistance only because of subparagraph (A)(ii)(IX) shall be limited to medical assistance for services related to pregnancy (including prenatal, delivery, and postpartum services) and to other conditions which may complicate pregnancy, (VIII) the medical assistance made available to a qualified medicare beneficiary described in section 1396d(p)(1) of this title shall be limited to medical assistance for medicare cost-sharing (described in section 1396d(p)(3) of this title), subject to the provisions of subsection (n) of this section and section 1396o(b) of this title, and (IX) the making available of respiratory care services in accordance with subsection (e)(9) of this section shall not, by reason of this paragraph (10), require the making available of such services, or

[1] So in original. Probably should be followed by "and".

the making available of such services of the same amount, duration, and scope, to any individuals not included under subsection (e)(9)(A) of this section, provided such services are made available (in the same amount, duration, and scope) to all individuals described in such subsection;

[*See main edition for text of (11) and (12)*]

(13) provide—

(A) for payment (except where the State agency is subject to an order under section 1396m of this title) of the hospital, skilled nursing facility, and intermediate care facility services provided under the plan through the use of rates (determined in accordance with methods and standards developed by the State and which, in the case of hospitals, take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs and provide, in the case of hospital patients receiving services at an inappropriate level of care (under conditions similar to those described in section 1395x(v)(1)(G) of this title), for lower reimbursement rates reflecting the level of care actually received (in a manner consistent with section 1395x(v)(1)(G) of this title)) which the State finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable State and Federal laws, regulations, and quality and safety standards and to assure that individuals eligible for medical assistance have reasonable access (taking into account geographic location and reasonable travel time) to inpatient hospital services of adequate quality; and such State makes further assurances, satisfactory to the Secretary, for the filing of uniform cost reports by each hospital, skilled nursing facility, and intermediate care facility and periodic audits by the State of such reports;

(B) that the State shall provide assurances satisfactory to the Secretary that the payment methodology utilized by the State for payments to hospitals can reasonably be expected not to increase such payments, solely as a result of a change of ownership, in excess of the increase which would result from the application of section 1395x(v)(1)(O) of this title;

(C) that the State shall provide assurances satisfactory to the Secretary that the valuation of capital assets, for purposes of determining payment rates for skilled nursing facilities and intermediate care facilities, will not be increased (as measured from the date of acquisition by the seller to the date of the change of ownership), solely as a result of a change of ownership, by more than the lesser of—

(i) one-half of the percentage increase (as measured over the same period of time, or, if necessary, as extrapolated retrospectively by the Secretary) in the Dodge Construction Systems Costs for Nursing Homes, applied in the aggregate with respect to those facilities which have undergone a change of ownership during the fiscal year, or

(ii) one-half of the percentage increase (as measured over the same period of time) in the Consumer Price Index for All Urban Consumers (United States city average);

(D) for payment for hospice care in the same amounts, and using the same methodology, as used under part A of subchapter XVIII of this chapter and for payment of amounts under section 1396d(*o*)(3) of this title; except that a separate rate may be paid for hospice care which is furnished to an individual who is a resident of a skilled nursing facility or intermediate care facility, and who would be eligible under the plan for skilled nursing facility services or intermediate care facility services if he had not elected to receive hospice care, to take into account the room and board furnished by such facility; and

(E) for payment for services described in section 1396d(a)(2)(B) of this title provided by a rural health clinic under the plan of 100 percent of costs which are reasonable and related to the cost of furnishing such services or based on such other tests of reasonableness, as the Secretary may prescribe in regulations under section 1395*l*(a)(3) of this title, or, in the case of services to which those regulations do not apply, on such tests of reasonableness as the Secretary may prescribe in regulations under this subparagraph;

[*See main edition for text of (14)*]

(15) in the case of eligible individuals 65 years of age or older who are not qualified medicare beneficiaries (as defined in section 1396d(p)(1) of this title) but are covered by either or both of the insurance programs established by subchapter XVIII of this chapter, provide where, under the plan, all of any deductible, cost sharing, or similar charge imposed with respect to such individual under the insurance program established by such subchapter is not met, the portion thereof which is met shall be determined on a basis reasonably related (as determined in accordance with standards approved by the Secretary and included in the plan) to such individual's income or his income and resources;

[*See main edition for text of (16)*]

(17) except as provided in subsection (*l*)(3) of this section, include reasonable standards (which shall be comparable for all groups and may, in accordance with standards prescribed by the Secretary, differ with respect to income levels, but only in the case of applicants or recipients of assistance under the plan who are 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, based on the variations between shelter costs in urban areas and in rural areas) for determining eligibility for and the extent of medical assistance under the plan which (A) are consistent with the objectives of this subchaptor, (B) provide for taking into account only such income and resources as are, as determined in accordance with standards prescribed by the Secretary, available to the applicant or recipient and (in the case of any applicant or recipient who would, except for income and resources, be eligible for aid or assistance in the form of money payments under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV, or to have paid with respect to him supplemental security income benefits under subchaptor XVI of this chapter) as would not be disregarded (or set aside for future needs) in determining his eligibility for such aid, assistance, or benefits, (C) provide for reasonable evaluation of any such income or resources, and (D) do not take into account the financial responsibility of any individual for any applicant or recipient of assistance under the plan unless such applicant or recipient is such individual's spouse or 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 is blind or disabled as defined in section 1382c of this title (with respect to States which are not eligible to participate in such program); and provide for flexibility in the application of such standards with respect to income by taking inte account, except to the extent prescribed by the Secretary, the costs (whether in the form of insurance premiums or otherwise) incurred for medical care or for any other type of remedial care recognized under State law;

[*See main edition for text of (18) and (19)*]

(20) if the State plan includes medical assistance in behalf of individuals 65 years of age or older who are patients in institutions for mental diseases—

[*See main edition for text of (A)*]

(B) provide for an individual plan for each such patient to assure tbat the institutional care provided to him is in his best interests, including, to that end, assurances that there will be initial and periodic review of his medical and other needs, that he will be given appropriate medical treatment within the institution, and that therc will be a periodic determination of his need for continued treatment in the institution; and

(C) provide for the development of alternate plans of care, making maximum utilization of available resources, for recipients 65 years of age or older who would otherwise need care in such institutions, including appropriate medical treatment and other aid or assistance; for services referred to in section 303(a)(4)(A)(i) and (ii) or section 1383(a)(4)(A)(i) and (ii) of this title which are appropriate for such recipients and for such patients; and for methods of administration necessary to assure that the responsibilities of the State agency under the State plan with respect to such recipients and such patients will be effectively carried out;

[*See main edition for text of (21) to (24)*]

(25) provide—

(A) that the State or local agency administering such plan will take all reasonable measures to ascertain the legal liability of third parties (including health insurers) to pay for care and services available under the plan, including—

(i) the collection of sufficient information (as specified by the Secretary in regulations) to enable the State to pursue claims against such third parties, with such information being collected at the time of any determination or redetermination of eligibility for medical assistance, and

(ii) the submission to the Secretary of a plan (subject to approval by the Secretary) for pursuing claims against such third parties, which plan shall—

(I) be integrated with, and be monitored as a part of the Secretary's review of, the State's mechanized claims processing and information retrieval system under section 1396b(r) of this title, and

(II) be subject to the provisions of section 1396b(r)(4) of this title relating to reductions in Federal payments for failure to meet conditions of approval, but shall not be subject to any other financial penalty as a result of any other monitoring, quality control, or auditing requirements;

(B) that in any case where such a legal liability is found to exist after medical assistance has been made available on behalf of the individual and where the amount of reimbursement the State can reasonably expect to recover exceeds the costs of such recovery, the State or local agency will seek reimbursement for such assistance to the extent of such legal liability;

(C) that in the case of an individual who is entitled to medical assistance under the State plan with respect to a service for which a third party is liable for payment, the person furnishing the service may not seek to collect from the individual (or any financially responsible relative or representative of that individual) payment of an amount for that service (i) if the total of the amount of the liabilities of third parties for that service is at least equal to the amount payable for that service under the plan (disregarding section 1396o of this title), or (ii) in an amount which exceeds the lesser of (I) the amount which may he collected under section 1396o of this title, or (II) the amount by which the amount payable for that service under the plan (disre-

garding section 1396o of this title) exceeds the total of the amount of the liabilities of third parties for that service;

(D) that a person who furnishes services and is participating under the plan may not refuse to furnish services to an individual (who is entitled to have payment made under the plan for the services the person furnishes) because of a third party's potential liability for payment for the service;

(E) that in the case of prenatal or preventive pediatric care (including early and periodic screening and diagnosis services under section 1396d(a)(4)(B) of this title) covered under the State plan, the State shall—

(i) make payment for such service in accordance with the usual payment schedule under such plan for such services without regard to the liability of a third party for payment for such services; and

(ii) seek reimbursement from such third party in accordance with subparagraph (B); and

(F) that in the case of any services covered under such plan which are provided to an individual on whose behalf child support enforcement is being carried out by the State agency under part D of subchapter IV of this chapter, the State shall—

(i) make payment for such service in accordance with the usual payment schedule under such plan for such services without regard to any third-party liability for payment for such services, if such third-party liability is derived (through insurance or otherwise) from the parent whose obligation to pay support is being enforced by such agency, if payment has not been made by such third party within 30 days after such services are furnished; and

(ii) seek reimbursement from such third party in accordance with subparagraph (B);

(26) if the State plan includes medical assistance for inpatient mental hospital services, provide—

(A) with respect to each patient receiving such services, for a regular program of medical review (including medical evaluation) of his need for such services, and for a written plan of care;

(B) for periodic inspections to be made in all mental institutions within the State by one or more medical review teams (composed of physicians and other appropriate health and social service personnel) of the care being provided to each person receiving medical assistance, including (i) the adequacy of the services available to meet his current health needs and promote his maximum physical well-being, (ii) the necessity and desirability of his continued placement in the institution, and (iii) the feasibility of meeting his health care needs through alternative institutional or noninstitutional services; and

(C) for full reports to the State agency by each medical review team of the findings of each inspection under subparagraph (B), together with any recommendations;

[*See main edition for text of (27)*]

(28) provide that any skilled nursing facility receiving payments under such plan must satisfy all of the requirements contained in section 1395x(j) of this title, except that the exclusion contained therein with respect to institutions which are primarily for the care and treatment of mental diseases shall not apply for purposes of this subchapter;

[*See main edition for text of (29)*]

(30)(A) provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1396b(i)(4) of this title) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care;

(B) provide, under the program described in subparagraph (A), that—

(i) each admission to a hospital, skilled nursing facility, intermediate care facility, or hospital for mental diseases is reviewed or screened in accordance with criteria established by medical and other professional personnel who are not themselves directly responsible for the care of the patient involved, and who do not have a significant financial interest in any such institution and are not, except in the case of a hospital, employed by the institution providing the care involved, and

(ii) the information developed from such review or screening, along with the data obtained from prior reviews of the necessity for admission and continued stay of patients by such professional personnel, shall be used as the basis for establishing the size and composition of the sample of admissions to be subject to review and evaluation by such personnel, and any such sample may be of any size up to 100 percent of all admissions and must be of sufficient size to serve the purpose of (I) identifying the patterns of care being provided and the changes occurring over time in such patterns so that the need for modification may be ascertained, and (II) subjecting admissions to early or more extensive review where information indicates that such consideration is warranted to a hospital, skilled nursing facility, intermediate care facility, or hospital for mental diseases; and

(C) provide a utilization and quality control peer review organization (under part B of subchapter XI of this chapter) or a private accreditation body to conduct (on an annual basis) an independent, external review of the quality of services furnished under each contract under section 1396b(m) of this title, with the results of such review made available to the State and, upon request, to the Secretary, the Inspector General in the Department of Health and Human Services, and the Comptroller General;

(31) with respect to skilled nursing facility services (and with respect to intermediate care facility services, where the State plan includes medical assistance for such services) provide—

(A) with respect to each patient receiving such services, for a written plan of care, prior to adinission to or authorization of benefits in such facility, in accordance with regulations of the Secretary, and for a regular program of independent professional review (including medical evaluation) which shall periodicaliy review his need for such services;

(B) with respect to each skilled nursing or intermediate care facility within the State, for periodic onsite inspections of the care being provided to each person receiving medicai assistance, by one or more independent professional review teams (composed of a physician or registered nurse and other appropriate health and social service personnel), including with respect to each such person (i) the adequacy of the services available to meet his current health needs and promote his maximum physical wellbeing, (ii) the necessity and desirability of his continued placement in the facility, and (iii) the feasibility of meeting his health care needs through alternative institutional or noninstitutional services; and

(C) for full reports to the State agency by each independent professional review team of the findings of each inspection under subparagraph (B), together with any recommendations;

[*See main edition for text of (32)*]

(33) provide—

(A) that the State health agency, or other appropriate State medical agency, shall be responsible for establishing a plan, consistent with regulations prescribed by the Secretary, for the review by appropriate professional health personnel of the appropriateness and quality of care and services furnished to recipients of medical assistance under the plan in order to provide guidance with respect thereto in the administration of the plan to the State agency established or designated pursuant to paragraph (5) and, where applicable, to the State agency described in the second sentence of this subsection; and

[*See main edition for text of (B), (34) to (41)*]

(42) provide (A) that the records of any entity participating in the plan and providing services reimbursable on a cost-related basis will be audited as the Secretary determines to be necessary to insure that proper payments are made under the plan, (B) that such audits, for such entities also providing services under subchapter XVIII of this chapter, will be coordinated and conducted jointly (to such extent and in such manner as the Secretary shall prescribe) with audits conducted for purposes of such subchapter, and (C) for payment of such proportion of costs of each such common audit as is determined under methods specified by the Secretary under section 1320a-8(a) of this title;

(43) provide for—

(A) informing all persons in the State who are under the age of 21 and who have been determined to be eligible for medical assistance including services described in section 1396d(a)(4)(B) of this title, of the availability of early and periodic screening, diagnostic, and treatment services as described in section 1396d(a)(4)(B) of this title,

(B) providing or arranging for the provision of such screening services in all cases where they are requested, and

(C) arranging for (directly or through referral to appropriate agencies, organizations, or individuals) corrective treatment the need for which is disclosed by such child health screening services;

(44) in each case for which payment for inpatient hospital services, skilled nursing facility services, intermediate care facility services, or inpatient mental hospital services is made under the State plan—

(A) a physician certifies at the time of admission, or, if later, the time the individual applies for medical assistance under the State plan (and the physician, or a physician assistant or nurse practitioner under the supervision of a physician, recertifies, where such services are furnished over a period of time, in such cases, at least as often as required under section 1396b(g)(6) of this title (or, in the case of services that are intermediate care facility services provided in an institution for the mentally retarded, every year), and accompanied by such supporting material, appropriate to the case involved, as may be provided in regulations of the Secretary), that such services are or were required to be given on an inpatient basis because the individual needs or needed such services, and

(B) such services were furnished under a plan established and periodically reviewed and evaluated by a physician;

(45) provide for mandatory assignment of rights of payment for medical support and other medical care owed to recipients, in accordance with section 1396k of this title;

(46) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b-7 of this title; and

(47) [1] at the option of the State, provide for making ambulatory prenatal care available to pregnant women during a presumptive eligibility period in accordance with section 1396r-1 of this title.

(47) [1] provide a method of making cards evidencing eligibility for medical assistance available to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.

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[1] So in original. There are two pars. designated (47).

Notwithstanding paragraph (5), if on January 1, 1965, and on the date on which a State submits its plan for approval under this subchapter, the State agency which administered or supervised the administration of the plan of such State approved under subchapter X of this chapter (or subchapter XVI of this chapter, insofar as it relates to the blind) was different from the State agency which administered or supervised the administration of the State plan approved under subchapter I of this chapter (or subchapter XVI of this chapter, insofar as it relates to the aged), the State agency which administered or supervised the administration of such plan approved under subchapter X of this chapter (or subchapter XVI of this chapter, insofar as it relates to the blind) may be designated to administer or supervise the administration of the portion of the State plan for medical assistance which relates to blind individuals and a different State agency may be established or designated to administer or supervise the administration of the rest of the State plan for medical assistance; and in such case the part of the plan which each such agency administers, or the administration of which each such agency supervises, shall be regarded as a separate plan for purposes of this subchapter (except for purposes of paragraph (10)). The provisions of paragraphs (9)(A), (31), and (33) and of section 1396b(i)(4) of this title shall not apply to a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.

For purposes of paragraph (10) any individual who, for the month of August 1972, was eligible for or receiving aid or assistance under a State plan approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter and who for such month was entitled to monthly insurance benefits under subchapter II of this chapter shall for purposes of this subchapter only be deemed te be eligible for financial aid or assistance for any month thereafter if such individual would have been eligible for financial aid or assistance for such month had the increase in monthly insurance benefits under subchapter II of this chapter resulting from enactment of Public Law 92-336 not been applicable to such individual.

The requirement of clause (A) of paragraph (37) with respect to a State plan may be waived by the Secretary if he finds that the State has exercised good faith in trying to meet such requirement. For purposes of this subchapter, any child who meets the requirements of paragraph (1) or (2) of section 673(b) of this title shall be deemed to be a dependent child as defined in section 606 of this title and shall be deemed to be a recipient of aid to families with dependent children under part A of subchapter IV of this chapter in the State where such child resides. Notwithstanding paragraph (10)(B) or any other provision of this subsection, a State plan shall provide medical assistance with respect te an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law only in accordance with section 1396b(v) of this title.

(b) Approval by Secretary

The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for medical assistance under the plan—

(1) an age requirement of more than 65 years; or

(2) any residence requirement which excludes any individual who resides in the State, regardless of whether or not the residence is maintained permanently or at a fixed address; or

[*See main edition for text of (3); (c)*]

(d) Performance of medical or utilization review functions

If a State contracts with a utilization and quality control peer review organization having a contract with the Secretary under part B of subchapter XI of this chapter for the performance of medical or utilization review functions (including quality review functions described in subsection (a)(30)(C) of this section) required under this subchapter of a State plan with respect to specific services or providers (or services or providers in a geographic area of the State), such requirements shall be deemed to be met for those services or providers (or services or providers in that area) by delegation to such organization (or organizations) under the contract of the State's authority to conduct such review activities if the contract provides for the performance of activities not inconsistent with part B of subchapter XI of this chapter and provides for such assurances of satisfactory performance by such organization (or organizations) as the Secretary may prescribe.

(e) Continued eligibility of families determined ineligible because of income and resources or hours of work limitations of plan; individuals enrolled with health maintenance organizations; persons deemed recipients of supplemental security income or State supplemental payments; entitlement for certain newborns; postpartum eligibility for pregnant women

[*See main edition for text of (1)*]

(2)(A) In the case of an individual who is enrolled with a qualified health maintenance organization (as defined in title XIII of the Public Health Service Act [42 U.S.C. 300e et seq.]) or with an entity described in section 1396b(m)(2)(G) of this title under a contract described in section 1396b(m)(2)(A) of this title and who would (but for this paragraph) lose eligibility for benefits under this subchapter before the end of the minimum enrollment period (defined in subparagraph (B)), the State plan may provide, notwithstanding any other provision of this subchapter, that the individual shall be deemed to continue to be eligible for such benefits until the end of such minimum period, but only with respect to such benefits provided to the individual as an enrollee of such organization or entity.

(B) For purposes of subparagraph (A), the term "minimum enrollment period" means,

with respect to an individual's enrollment with an organization or entity under a State plan, a period, established by the State, of not more than six months beginning on the date the individual's enrollment with the organization or entity becomes effective.

[*See main edition for text of (3)*]

(4) A child born to a woman eligible for and receiving medical assistance under a State plan on the date of the child's birth shall be deemed to have applied for medical assistance and to have been found eligible for such assistance under such plan on the date of such birth and to remain eligible for such assistance for a period of one year so long as the child is a member of the woman's household and the woman remains eligible for such assistance.

(5) A woman who, while pregnant, is eligible for, has applied for, and has received medical assistance under the State plan, shall continue to be eligible under the plan, as though she were pregnant, for all pregnancy-related and postpartum medical assistance under the plan, until the end of the 60-day period beginning on the last day of her pregnancy.

(6) At the option of a State, if a State plan provides medical assistance for individuals under subsection (a)(10)(A)(ii)(IX) of this section, the plan may provide that any woman described in such subsection and subsection (*l*)(1)(A) of this section shall continue to be treated as an individual described in subsection (a)(10)(A)(ii)(IX) of this section without regard to any change in income of the family of which she is a member until the end of the 60-day period beginning on the last day of her pregnancy.

(7) If a State plan provides medical assistance for individuals under subsection (a)(10)(A)(ii)(IX) of this section, in the case of an infant or child described in subparagraph (B), (C), (D), (E), or (F) of subsection (*l*)(1) of this section—

(A) who is receiving inpatient services for which medical assistance is provided on the date the infant or child attains the maximum age with respect to which coverage is provided under the State plan for such individuals, and

(B) who, but for attaining such age, would remain eligible for medical assistance under such subsection,

the infant or child shall continue to be treated as an individual described in subsection (a)(10)(A)(ii)(IX) of this section and subsection (*l*)(1) of this section until the end of the stay for which the inpatient services are furnished.

(8) If an individual is determined to be a qualified medicare beneficiary (as defined in section 1396d(p)(1) of this title), such determination shall apply to services furnished after the end of the month in which the determination first occurs. For purposes of payment to a State under section 1396b(a) of this title, such determination shall be considered to be valid for an individual for a period of 12 months, except that a State may provide for such determinations more frequently, but not more frequently than once every 6 months for an individual.

(9)(A) At the option of the State, the plan may include as medical assistance respiratory care services for any individual who—

(i) is medically dependent on a ventilator for life support at least six hours per day;

(ii) has been so dependent for at least 30 consecutive days (or the maximum number of days authorized under the State plan, whichever is less) as an inpatient;

(iii) but for the availability of respiratory care services, would require respiratory care as an inpatient in a hospital, skilled nursing facility, or intermediate care facility, and would be eligible to have payment made for such inpatient care under the State plan;

(iv) has adequate social support services to be cared for at home; and

(v) wishes to be cared for at home.

(B) The requirements of subparagraph (A)(ii) may be satisfied by a continuous stay in one or more hospitals, skilled nursing facilities, or intermediate care facilities.

(C) For purposes of this paragraph, respiratory care services means services provided on a part-time basis in the home of the individual by a respiratory therapist or other health care professional trained in respiratory therapy (as determined by the State), payment for which is not otherwise included within other items and services furnished to such individual as medical assistance under the plan.

(f) Effective date of State plan as determinative of duty of State to provide medical assistance to aged, blind, or disabled individuals

Notwithstanding any other provision of this subchapter, except as provided in subsection (e) of this section and section 1382h(b)(3) of this title, no State not eligible to participate in the State plan program established under subchapter XVI of this chapter shall be required to provide medical assistance to any aged, blind, or disabled individual (within the meaning of subchapter XVI of this chapter) for any month unless such State would be (or would have been) required to provide medical assistance to such individual for such month had its plan for medical assistance approved under this subchapter and in effect on January 1, 1972, been in effect in such month, except that for this purpose any such individual shall be deemed eligible for medical assistance under such State plan if (in addition to meeting such other requirements as are or may be imposed under the State plan) the income of any such individual as determined in accordance with section 1396b(f) of this title (after deducting any supplemental security income payment and State supplementary payment made with respect to such individual, and incurred expenses for medical care as recognized under State law) is not in excess of the standard for medical assistance established under the State plan as in effect on January 1, 1972. In States which provide medical assistance to individuals pursuant to paragraph (10)(C) of subsection (a) of this section, an individual who is eligible for medical assistance by reason of the requirements of this section concerning the deduction of incurred medical expenses from income shall be considered

an individual eligible for medical assistance under paragraph (10)(A) of that subsection if that individual is, or is eligible to be (1) an individual with respect to whom there is payable a State supplementary payment on the basis of which similarly situated individuals are eligible to receive medical assistance equal in amount, duration, and scope to that provided to individuals eligible under paragraph (10)(A), or (2) an eligible individual or eligible spouse, as defined in subchapter XVI of this chapter, with respect to whom supplemental security income benefits are payable; otherwise that individual shall be considered to be an individual eligible for medical assistance under paragraph (10)(C) of that subsection. In States which do not provide medical assistance to individuals pursuant to paragraph (10)(C) of that subsection, an individual who is eligible for medical assistance by reason of the requirements of this section concerning the deduction of incurred medical expenses from income shall be considered an individual eligible for medical assistance under paragraph (10)(A) of that subsection.

(g) Reduction of aid or assistance to providers of services attempting to collect from beneficiary in violation of third-party provisions

In addition to any other sanction available to a State, a State may provide for a reduction of any payment amount otherwise due with respect to a person who furnishes services under the plan in an amount equal to up to three times the amount of any payment sought to be collected by that person in violation of subsection (a)(25)(C) of this section.

(h) Payment adjustments with respect to hospitals serving disproportionate number of low-income patients with special needs

Nothing in this subchapter (including subsections (a)(13) and (a)(30) of this section) shall be construed as authorizing the Secretary to limit the amount of payment adjustments that may be made under a plan under this subchapter with respect to hospitals that serve a disproportionate number of low-income patients with special needs.

[*See main edition for text of* (i)]

(j) Waiver or modification of subchapter requirements with respect to medical assistance program in American Samoa

Notwithstanding any other requirement of this subchapter, the Secretary may waive or modify any requirement of this subchapter with respect to the medical assistance program in American Samoa, other than a waiver of the Federal medical assistance percentage, the limitation in section 1308(c) of this title, or the requirement that payment may be made for medical assistance only with respect to amounts expended by American Samoa for care and services described in paragraphs (1) through (21) of section 1396d(a) of this title.

(k) Treatment of potential payments from medicaid qualifying trusts

(1) In the case of a medicaid qualifying trust (described in paragraph (2)), the amounts from the trust deemed available to a grantor, for purposes of subsection (a)(17) of this section, is the maximum amount of payments that may be permitted under the terms of the trust to be distributed to the grantor, assuming the full exercise of discretion by the trustee or trustees for the distribution of the maximum amount to the grantor. For purposes of the previous sentence, the term "grantor" means the individual referred to in paragraph (2).

(2) For purposes of this subsection, a "medicaid qualifying trust" is a trust, or similar legal device, established (other than by will) by an individual (or an individual's spouse) under which the individual may be the beneficiary of all or part of the payments from the trust and the distribution of such payments is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the individual.

(3) This subsection shall apply without regard to—

(A) whether or not the medicaid qualifying trust is irrevocable or is established for purposes other than to enable a grantor to qualify for medical assistance under this subchapter; or

(B) whether or not the discretion described in paragraph (2) is actually exercised.

(4) The State may waive the application of this subsection with respect to an individual where the State determines that such application would work an undue hardship.

(*l*) [1] Description of group

(1) Individuals described in this paragraph are—

(A) women during pregnancy (and during the 60-day period beginning on the last day of the pregnancy),

(B) infants under one year of age,

(C) children who have attained one year of age but have not attained two years of age,

(D) children who have attained two years of age but have not attained three years of age,

(E) children who have attained three years of age but have not attained four years of age, and

(F) children who have attained four years of age but have not yet attained five years of age,

who are not described in subsection (a)(10)(A)(i) of this section, whose family income does not exceed the income level established by the State under paragraph (2) for a family size equal to the size of the family, including the woman, infant, or child.

(2) For purposes of paragraph (1), the State shall establish an income level which is a percentage (not more than 100 percent) of the nonfarm 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.

(3) Notwithstanding subsection (a)(17) of this section, for individuals who are eligible for

[1] So in original. There are two subsecs. designated (*l*).

medical assistance because of subsection (a)(10)(A)(ii)(IX) of this section—

(A) application of a resource standard shall be at the option of the State;

(B) any resource standard or methodology that is applied with respect to an individual described in subparagraph (A) of paragraph (1) may not be more restrictive than the resource standard or methodology that is applied under subchapter XVI of this chapter;

(C) any resource standard or methodology that is applied with respect to an individual described in subparagraph (B), (C), (D), (E), or (F) of paragraph (1) may not be more restrictive than the corresponding methodology that is applied under the State plan under part A of subchapter IV of this chapter;

(D) the income standard to be applied is the income standard established under paragraph (2); and

(E) family income shall be determined in accordance with the methodology employed under the State plan under part A or E of subchapter IV of this chapter, and costs incurred for medical care or for any other type of remedial care shall not be taken into account.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17) of this section, require or permit such treatment for other individuals.

(4)(A) A State plan may not elect the option of furnishing medical assistance to individuals described in subsection (a)(10)(A)(ii)(IX) of this section unless the State has in effect, under its plan established under part A of subchapter IV of this chapter, payment levels that are not less than the payment levels in effect under its plan on April 17, 1986.

(B)(i) A State may not elect, under subsection (a)(10)(A)(ii)(IX) of this section, to cover only individuals described in paragraph (1)(A) or to cover only individuals described in paragraph (1)(B).

(ii) A State may not elect, under subsection (a)(10)(A)(ii)(IX) of this section, to cover individuals described in subparagraph (C), (D), (E), or (F) of paragraph (1) unless the State has elected, under such subsection, to cover individuals described in the preceding subparagraphs of such paragraph.

(*l*) [1] Certain benefits disregarded for purposes of determining post-eligibility contributions

Notwithstanding any provision of subsection (a) of this section to the contrary, a State plan under this subchapter shall provide that any supplemental security income benefits paid by reason of section 1382(e)(1)(E) of this title to an individual who—

(1) is eligible for medical assistance under the plan, and

(2) is in a hospital, skilled nursing facility, or intermediate care facility at the time such benefits are paid,

will be disregarded for purposes of determining the amount of any post-eligibility contribution by the individual to the cost of the care and services provided by the hospital, skilled nursing facility, or intermediate care facility.

(m) Description of individuals

(1) Individuals described in this paragraph are individuals—

(A) who are 65 years of age or older or are disabled individuals (as determined under section 1382c(a)(3) of this title),

(B) whose income (as determined under section 1382a of this title for purposes of the supplemental security income program) does not exceed an income level established by the State consistent with paragraph (2)(A), and

(C) whose resources (as determined under section 1382b of this title for purposes of the supplemental security income program) do not exceed (except as provided in paragraph (2)(B)) the maximum amount of resources that an individual may have and obtain benefits under that program.

(2)(A) The income level established under paragraph (1)(B) may not exceed a percentage (not more than 100 percent) of the nonfarm 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.

(B) In the case of a State that provides medical assistance to individuals not described in subsection (a)(10)(A) of this section and at the State's option, the State may use under paragraph (1)(C) 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 subsection (a)(10)(A) of this section.

(3) A State plan may not provide coverage for individuals under subsection (a)(10)(A)(ii)(X) of this section or coverage under subsection (a)(10)(E) of this section, unless the plan provides coverage of some or all of the individuals described in subsection (*l*)(1) of this section.

(4) Notwithstanding subsection (a)(17) of this section, for individuals described in paragraph (1) who are covered under the State plan by virtue of subsection (a)(10)(A)(ii)(X) of this section—

(A) the income standard to be applied is the income standard described in paragraph (1)(B), and

(B) except as provided in section 1382a(b)(4)(B)(ii) of this title, costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17) of this section, require or permit such treatment for other individuals.

(5) Notwithstanding subsection (a)(17) of this section, for qualified medicare beneficiaries described in section 1396d(p)(1) of this title—

(A) the income standard to be applied is the income standard described in section 1396d(p)(1)(C) of this title, and

[1] So in original. There are two subsecs. designated (*l*).

(B) except as provided in section 1382a(b)(4)(B)(ii) of this title, costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17) of this section, require or permit such treatment for other individuals.

(n) Payment amounts

In the case of medical assistance furnished under this subchapter for medicare cost-sharing respecting the furnishing of a service or item to a qualified medicare beneficiary, the State plan may provide payment in an amount with respect to the service or item that results in the sum of such payment amount and any amount of payment made under subchapter XVIII of this chapter with respect to the service or item exceeding the amount that is otherwise payable under the State plan for the item or service for eligible individuals who are not qualified medicare beneficiaries.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2303(g)(1), 2314(b), 2335(e), 2361(a), 2362(a), 2363(a)(1), 2367(a), 2368(a), (b), 2373(b)(1)-(10), title VI, § 2651(c), 98 Stat. 1066, 1079, 1091, 1104, 1105, 1108, 1109, 1111, 1149; Aug. 16, 1984, Pub. L. 98-378, § 20(c), 98 Stat. 1322; Nov. 8, 1984, Pub. L. 98-617, § 3(a)(7), (b)(10), 98 Stat. 3295, 3296; Apr. 7, 1986, Pub. L. 99-272, title IX, §§ 9501(b), (c), 9503(a), 9505(b), (c)(1), (d), 9506(a), 9509(a), 9510(a), 9517(b), 9529(a)(1), (b)(1), title XII, § 12305(b)(3), 100 Stat. 201, 202, 205, 208-212, 216, 220, 293; Oct. 21, 1986, Pub. L. 99-509, title IX, §§ 9320(h)(3), 9401(a)-(e)(1), 9402(a), (b), 9403(a), (c), (e)-(g)(I), (4)(A), 9404(a), 9405, 9406(b), 9407(a), 9408(a), (b), (c)(2), (3), 9431(a), (b)(1), 9433(a), 9435(b)(1), 100 Stat. 2016, 2050-2058, 2060, 2061, 2066, 2068, 2069; Oct. 22, 1986, Pub. L. 99-514, title XVIII, § 1895(c)(1), (3)(B), (C), (7), 100 Stat. 2935, 2936; Oct. 27, 1986, Pub. L. 99-570, title XI, § 11005(b), 100 Stat. 3207-169; Nov. 10, 1986, Pub. L. 99-643, §§ 3(b), 7(b), 100 Stat. 3575, 3579.)

REFERENCES IN TEXT

Parts A, D, and E of subchapter IV of this chapter, referred to in subsecs. (a), (b), (e)(1), and (*l*)(3), (4), are classified to sections 601 et seq., 651 et seq., and 670 et seq., respectively, of this title.

Subsection (*l*) of this section, referred to in subsecs. (a)(10), (17), (e)(6), (7), and (m)(3), probably means the subsec. (*l*) set out first relating to description of group.

Part A of subchapter XVIII of this chapter, referred to in subsec. (a)(13)(D), is classified to section 1395c et seq. of this title.

Part B of subchapter XI of this chapter, referred to in subsecs. (a)(30)(C) and (d), is classified to section 1320c et seq. of this title.

Pub. L. 92-336, referred to in provisions following subsec. (a)(47), is Pub. L. 92-336, July 1, 1972, 86 Stat. 406, which amended sections 401, 403, 409, 411, 415, 427, 428, and 430 of this title and sections 165, 1401, 1402, 3101, 3111, 3121, 3122, 3125, 6413, and 6654 of Title 26, Internal Revenue Code, and enacted provisions set out as notes under sections 403, 409, 415, and 428 of this title and sections 165 and 1401 of Title 26.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-509, § 9406(b), inserted at end "Notwithstanding paragraph (10)(B) or any other provision of this subsection, a State plan shall provide medical assistance with respect to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law only in accordance with section 1396b(v) of this title."

Pub. L. 99-272, § 9529(a)(1), inserted at end "For purposes of this subchapter, any child who meets the requirements of paragraph (1) or (2) of section 673(b) of this title shall be deemed to be a dependent child as defined in section 606 of this title and shall be deemed to be a recipient of aid to families with dependent children under part A of subchapter IV of this chapter in the State where such child resides."

Subsec. (a)(9)(C). Pub. L. 99-509, § 9320(h)(3), substituted "paragraphs (12) and (13)" for "paragraphs (11) and (12)".

Subsec. (a)(10). Pub. L. 99-509, § 9408(b), added cl. (IX) at end.

Pub. L. 99-509, § 9403(c), added cl. (VIII) at end.

Pub. L. 99-509, § 9401(c), added cl. (VII) at end.

Pub. L. 99-272, § 9505(b)(1), added cl. (VI) at end.

Pub. L. 99-272, § 9501(b), added cl. (V) at end.

Subsec. (a)(10)(A)(i)(I). Pub. L. 99-272, § 12305(b)(3), substituted ", 606(h), or 673(b) of this title" for "or 606(h) of this title".

Subsec. (a)(10)(A)(i)(II). Pub. L. 99-509, § 9404(a), inserted "or who are qualified severely impaired individuals (as defined in section 1396d(q) of this title)" after "subchapter XVI of this chapter".

Subsec. (a)(10)(A)(ii)(V). Pub. L. 99-272, § 9510(a), inserted "for a period of not less than 30 consecutive days (with eligibility by reason of this subclause beginning on the first day of such period)" after "are in a medical institution".

Subsec. (a)(10)(A)(ii)(VII). Pub. L. 99-514, § 1895(c)(7)(A), realigned margin of subcl. (VII).

Pub. L. 99-272, § 9505(b)(2), added subcl. (VII).

Subsec. (a)(10)(A)(ii)(VIII). Pub. L. 99-514, § 1895(c)(7)(B), realigned margins of subcl. (VIII).

Pub. L. 99-272, § 9529(b)(1), added subcl. (VIII).

Subsec. (a)(10)(A)(ii)(IX). Pub. L. 99-509, § 9401(a), added subcl. (IX).

Subsec. (a)(10)(A)(ii)(X). Pub. L. 99-509, § 9402(a)(1), added subcl. (X).

Subsec. (a)(10)(C). Pub. L. 99-509, § 9403(g)(1), inserted "or (E)" after "subparagraph (A)" in introductory text.

Subsec. (a)(10)(C)(iv). Pub. L. 99-509, § 9408(c)(3), substituted "through (20)" for "through (19)".

Pub. L. 99-514, § 1895(c)(3)(C), substituted "through (19)" for "through (18)".

Pub. L. 99-272, § 9505(d)(2), substituted "through (16)" for "through (17)".

Subsec. (a)(10)(E). Pub. L. 99-509, § 9403(a), added subpar. (E).

Subsec. (a)(13)(B). Pub. L. 99-272, § 9509(a)(1), substituted "hospitals" for "hospitals, skilled nursing facilities, and intermediate care facilities".

Subsec. (a)(13)(C). Pub. L. 99-272, § 9509(a)(4), added subpar. (C). Former subpar. (C) redesignated (D).

Pub. L. 99-272, § 9505(c)(1), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (a)(13)(D). Pub. L. 99-514, § 1895(c)(1), inserted "and" after "facility;".

Pub. L. 99-509, § 9435(b)(1), inserted "and for payment of amounts under section 1396d(o)(3) of this title" before first semicolon.

Pub. L. 99-272, § 9509(a)(2), (3), redesignated former subpar. (C) as (D), and struck out "and" at the end thereof. Former subpar. (D) redesignated (E).

Pub. L. 99-272, § 9505(c)(1)(B), redesignated former subpar. (C) as (D).

Subsec. (a)(13)(E). Pub. L. 99-272, § 9509(a)(3), redesignated former subpar. (D) as (E).

Subsec. (a)(15). Pub. L. 99-509, § 9403(g)(4)(A), inserted "are not qualified medicare beneficiaries (as defined in section 1396d(p)(1) of this title) but" after "older who".

Subsec. (a)(17). Pub. L. 99-509, § 9401(e)(1), inserted "except as provided in subsection (*l*)(3) of this section" after "(17)".

Subsec. (a)(25). Pub. L. 99-272, § 9503(a)(1), amended par. (25) generally. Prior to amendment, par. (25) read as follows: "provide (A) that the State or local agency administering such plan will take all reasonable measures to ascertain the legal liability of third parties te pay for care and services (available under the plan) arising out of injury, disease, or disability, (B) that where the State or local agency knows that a third party has such a legal liability such agency will treat such legal liability as a resource of the individual on whose behalf the care and services are made available for purposes of paragraph (17)(B), and (C) that in any case where such a legal liability is found to exist after medical assistance has been made available on behalf of the individual and where the amount of reimbursement the State can reasonably expect to recover exceeds the costs of such recovery, the Stato or local agency will seek reimbursement for such assistance to the extent of such legal liability;".

Subsec. (a)(30)(C). Pub. L. 99-509, § 9431(a), added subpar. (C).

Subsec. (a)(47). Pub. L. 99-570 added par. (47) relating to cards evidencing eligibility for medical assistance.

Pub. L. 99-509, § 9407(a), added par. (47) relating to ambulatory prenatal care.

Subsec. (b)(2). Pub. L. 99-509, § 9405, inserted before semicolon ", regardless of whether or not the residence is maintained permanently or at a fixed address".

Subsec. (d). Pub. L. 99-509, § 9431(b)(1), inserted "(including quality review functions described in subsection (a)(30)(C) of this section)" after "medical or utilization review functions".

Subsec. (e)(2)(A). Pub. L. 99-272, § 9517(b)(1), inserted reference to an entity described in section 1396b(m)(2)(G) of this title, and substituted "such organization or entity" for "such organization".

Subsec. (e)(2)(B). Pub. L. 99-272, § 9517(b)(2), substituted "an organization or entity" for "a health maintenance organization" and "the organization or entity" for "the organization".

Subsec. (e)(5). Pub. L. 99-272, § 9501(c), added par. (5).

Subsec. (e)(6), (7). Pub. L. 99-509, § 9401(d), added pars. (6) and (7).

Subsec. (e)(8). Pub. L. 99-509, § 9403(f)(2), added par. (8).

Subsec. (e)(9). Pub. L. 99-509, § 9408(a), added par. (9).

Subsec. (f). Pub. L. 99-643, § 7(b), substituted "subsection (e) of this section and section 1362h(b)(3) of this title" for "subsection (e) of this section".

Subsec. (g). Pub. L. 99-272, § 9503(a)(2), added subsec. (g).

Subsec. (h). Pub. L. 99-509, § 9433(a), added subsec. (d) to section 2173 of Pub. L. 97-35 in turn which added subsec. (h) of this section. See 1961 Amendment note below.

Subsec. (j). Pub. L. 99-509, § 9408(c)(2), substituted "(21)" for "(20)".

Pub. L. 99-514, § 1895(c)(3)(B), substituted "(20)" for "(19)".

Pub. L. 99-272, § 9505(d)(1), substituted "(19)" for "(18)".

Subsec. (k). Pub. L. 99-272, § 9506(a), added subsec. (k).

Subsec. (*l*). Pub. L. 99-643, § 3(b), added subsec. (*l*) relating to disregarding of certain benefits for purposes of determining post-eligibility contributions.

Pub. L. 99-509, § 9401(b), added subsec. (*l*) relating to description of group.

Subsec. (m). Pub. L. 99-509, § 9402(a)(2), (b), added subsec. (m).

Subsec. (m)(3). Pub. L. 99-509, § 9403(f)(1)(A), which directed insertion of "or coverage under subsection (a)(10)(E) of this section" after "subsection (a)(10)(A)(ii)(IX) of this section", was executed by making the insertion after "subsection (a)(10)(A)(ii)(X) of this section" as the probable intent of Congress.

Subsec. (m)(5). Pub. L. 99-509, § 9403(f)(1)(B), added par. (5).

Subsec. (n). Pub. L. 99-509, § 9403(e), added subsec. (n).

1984—Subsec. (a)(9)(C). Pub. L. 98-369, § 2373(b)(1), realigned margin of subpar. (C).

Subsec. (a)(10)(A). Pub. L. 98-369, § 2373(b)(2), realigned margins of subpar. (A).

Subsec. (a)(10)(A)(i). Pub. L. 98-369, § 2361(a), amended cl. (i) generally. Prior to the amendment cl. (i) read as follows: "all individuals receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI of this chapter, or part A or part E of subchapter IV of this chapter (including pregnant women deemed by the State to be receiving such aid as authorized in section 606(g) of this title and individuals considered by the State to be receiving such aid as authorized under section 614(g) of this title), or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter; and".

Subsec. (a)(10(A)(i)(I). Pub. L. 98-378, § 20(c), substituted "section 602(a)(37) or 606(h) of this title" for "section 602(a)(37) of this title".

Subsec. (a)(13)(A). Pub. L. 98-369, § 2373(b)(3), made clarifying amendment by striking out "(A)" and all that follows through "hospital" the first place it appears and inserting in lieu thereof "(A) for payment (except where the State agency is subject to an order under section 1396m of this title) of the hospital", resulting in no change in text.

Subsec. (a)(13)(B), (C). Pub. L. 98-369, § 2314(b), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (a)(20)(B). Pub. L. 98-369, § 2373(b)(4), substituted "periodic" for "periodical".

Subsec. (a)(20)(C). Pub. L. 98-369, § 2373(b)(5), struck out reference to section 803(a)(1)(A)(i) and (ii) of this title.

Subsec. (a)(26). Pub. L. 98-369, § 2368(b), in amending par. (26) generally, revised existing provisions to continue their application to review of inpatient mental hospital service programs, and to sever provisions relating to review of skilled nursing programs. See par. (31) of this section.

Subsec. (a)(26)(B)(ii). Pub. L. 98-617, § 3(a)(7), repealed the amendment made by Pub. L. 98-369, § 2373(b)(6). See below.

Pub. L. 98-369, § 2373(b)(6), provided that cl. (ii) is amended by substituting "facilities" for "homes".

Subsec. (a)(26)(C). Pub. L. 98-617, § 3(b)(10), realigned margin of subpar. (C).

Subsec. (a)(28). Pub. L. 98-369, § 2335(e), struck out "and tuberculosis" after "mental diseases".

Subsec. (a)(30). Pub. L. 98-369, § 2363(a)(1)(A), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(31). Pub. L. 98-369, § 2308(a), in amending par. (31) generally, revised existing provisions to cover review of skilled nursing facilities.

Subsec. (a)(33)(A). Pub. L. 98-369, § 2373(b)(7), substituted "second sentence" for "penultimate sentence".

Subsec. (a)(42). Pub. L. 98-369, § 2373(b)(8), substituted "subehapter" for "part" after "audits eonducted for purposes of such".

Subsec. (a)(43). Pub. L. 98-369, § 2303(g)(1), redesignated par. (44) as (43), and struck out former par. (43) which provided that if the State plan makes provision for payment to a physician for laberatory services the

performance of which such physician, or other physician with whom he shares his practice, did not personally perform or supervise, the plan include provision to insure that payment for such services not exceed the payment authorized by section 1395u(h) of this title.

Subsec. (a)(44). Pub. L. 98-369, § 2363(a)(1)(B), added par. (44).

Pub. L. 98-369, § 2303(g)(1)(C), redesignated former par. (44) as (43).

Subsec. (a)(45). Pub. L. 98-369, § 2367(a), added par. (45).

Subsec. (a)(46). Pub. L. 98-369, § 2651(c), added par. (46).

Subsec. (a), foll. par. (46). Pub. L. 98-369, § 2373(b)(9), substituted "The provisions of paragraph (9)(A), (31), and (33) and of section 1396b(i)(4) of this title shall not apply to" for "For purposes of paragraph (9)(A), (26), (31), and (33), and of section 1396b(i)(4) of this title, the term 'skilled nursing facility' and 'nursing home' do not include".

Subsec. (e)(4). Pub. L. 98-369, § 2362(a), added par. (4).

Subsec. (f). Pub. L. 98-369, § 2373(b)(10), substitutcd "paragraph (10)(A)" and "paragraph (10)(C)" for "clause (10)(A)" and "clause (10)(C)", respectively, wherever appearing.

1981—Subsec. (h). Pub. L. 97-35, § 2173(b)(1), (d), as amended by Pub. L. 99-509, § 9433(a), added a new subsec. (h) and repealed former subsec. (h) which related to skilled nursing and intermediate care facility services.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 10(b) of Pub. L. 99-643 provided that:

"(1) Except as provided in paragraph (2), the amendments made by sections 3, 4, 5, 6, and 7 [amending sections 1382, 1382c, 1382h, 1383, 1396a, and 1396s of this title] shall become effective on July 1, 1987.

"(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 requirements imposed by the amendments made by section 3(b) [amending this section] and section 7 of this Act [amending sections 1382h and 1396a of this title], the Stato plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet such additional requirements until 60 days after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Nov. 10, 1986]."

Section 11005(c)(2) of Pub. L. 99-570 provided that: "The amendments made by subsection (b) [amending this section] shall become effective on January 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date."

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 9320(h)(3) of Pub. L. 99-509 applicable to services furnished on or after Jan. 1, 1989, see section 9320(i) of Pub. L. 99-509, set out as a note under section 1395k of this title.

Section 9401(f) of Pub. L. 99-509 provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending sections 1396a and 1396b of this title] shall apply to medical assistance furnished in calendar quarters beginning on or after April 1, 1987.

"(2)(A) Subparagraph (C) of section 1902(*l*)(1) of the Social Security Act [subsec. (*l*)(1)(C) of this section], as added by subsection (b) of this section, shall apply to medical assistance furnished in calendar quarters beginning on or after October 1, 1987.

"(B) Subparagraph (D) of section 1902(*l*)(1) of the Social Security Act, as added by subsection (b) of this section, shall apply to medical assistance furnished in calendar quarters beginning on or after October 1, 1988.

"(C) Subparagraph (E) of section 1902(*l*)(1) of the Social Security Act, as added by subsection (b) of this section, shall apply to medical assistance furnished in calendar quarters beginning on or after October 1, 1989.

"(D) Subparagraph (F) of section 1902(*l*)(1) of the Social Security Act, as added by subsection (b) of this section, shall apply to medical assistance furnished in calendar quarters beginning on or after October 1, 1990.

"(3) An amendment made by this section shall become effective as provided in paragraph (1) or (2) without regard to whether or not final regulations to carry out such amendment have been promulgated by the applicable date."

Section 9402(c) of Pub. L. 99-509 provided that: "The amendments made by this section [amending this section] shall apply to payments to Stsates 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."

Section 9403(h) of Pub. L. 99-509 provided that: "The amendments made by this section [amending sections 1396a, 1396b, 1396d, and 1396o of this title] apply to payments under title XIX of the Social Security Act [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."

Section 9404(c) of Pub. L. 99-509 provided that:

"(1) The amendments made by this section [amending sections 1396a and 1396d of this title] apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act [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.

"(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 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 [Oct. 21, 1986]."

Section 9406(c) of Pub. L. 99-509 provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending sections 1396a and 1306b of this title] shall apply to medical assistance furnished to aliens on or after January 1, 1987, 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 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 requirement imposed by the amendment made in subsection (b) [amending 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 such 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 [Oct. 21, 1986]."

Section 9407(d) of Pub. L. 99-509 provided that: "The amendments made by this section [enacting section 1396r-1 of this title and amending sections 1396a, 1396b, and 1396s of this title] shall apply to ambulatory prenatal care furnished in calendar quarters beginning on or after April 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date."

Section 9406(d) of Pub. L. 99-509 provided that: "The amendments made by this section [amending sections 1396a and 1396d of this title] shall apply to services furnished on or after the date of the enactment of this Act [Oct. 21, 1986]."

Section 9431(c) of Pub. L. 99-509 provided that: "The amendments made by this section [amending 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 July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date."

Section 9433(b) of Pub. L. 99-509 provided that: "The amendment made by subsection (a) [amending section 2173 of Pub. L. 97-35 which amended this section] shall apply as though it was included in the enactment of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35)."

Section 9435(f) of Pub. L. 99-509 provided that: "The amendments made by this section [amending sections 1396a and 1396d of this title and provisions set out as notes under sections 1396a, 1396d, and 1396n of this title] shall be effective as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99-272]."

Section 9501(d)(2), (3) of Pub. L. 99-272 provided that:

"(2) OPTIONAL SERVICES.—The amendments made by subsection (b) [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].

"(3) CONTINUED COVERAGE.—The amendment made by subsection (c) [amending this section] shall apply to medical assistance furnished to a woman on or after the date of the enactment of this Act."

Section 9503(g) of Pub. L. 99-272 provided that:

"(1) Except as otherwise provided, the amendments made by this section [amending sections 1396a, 1396b, and 1396k of this title and section 1144 of Title 29, Labor, and enacting provisions set out as notes under section 1396a of this title and section 1144 of Title 29] shall apply to calendar quarters beginning on or after the date of the enactment of this Act.

"(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 (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 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.

"(3) No penalty may be applied against any State for a violation of section 1902(a)(25) of the Social Security Act [subsec. (a)(25) of this section] occurring prior to the effective date of the amendments made by this section.

"(4) The amendment made by subsection (c) [enacting provisions set out as a note below] shall become effective on the date of the enactment of this Act [Apr. 7, 1986]."

Section 9505(e) of Pub. L. 99-272, as amended by Pub. L. 99-509, title IX, § 9435(d)(1), Oct. 21, 1986, 100 Stat. 2070, provided that: "The amendments made by this section [amending sections 1396a, 1396d, and 1396o of this title] shall apply to medical assistance provided for hospice care 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 9506(b), (c) of Pub. L. 99-272, as amended by Pub. L. 99-509, title IX, § 9435(c), Oct. 21, 1986, 100 Stat. 2070, provided that:

"(b) EFFECTIVE DATE.—The amendment made by subsection (a) [amending this section] shall apply to medical assistance furnished on or after the first day of the second month beginning after the date of the enactment of this Act [Apr. 7, 1986].

"(c) EXCEPTION.—The amendment made by subsection (a) [amending this section] shall not apply to any trust or initial trust decree established prior to April 7, 1986, solely for the benefit of a mentally retarded individual who resides in an intermediate care facility for the mentally retarded."

Section 9509(b) of Pub. L. 99-272 provided that:

"(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and enacting provisions set out as a note below] shall apply to medical assistance furnished on or after October 1, 1985, but only with respect to changes of ownership occurring on or after such date.

"(2) The amendments made by this section shall not apply with respect to a change of ownership pursuant to an enforceable agreement entered into prior to October 1, 1985.

"(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 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 the requirements imposed by the amendments made by this section 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]."

Section 9510(b) of Pub. L. 99-272, as amended by Pub. L. 99-509, title IX, § 9435(d)(2), Oct. 21, 1986, 100 Stat. 2070, provided that: "The amendment made by this section [amending this section] shall apply with respect to payment for services furnished on or after October 1, 1985, without regard to whether or not regulations to carry out the amendment have been promulgated by that date."

Section 9529(a)(2) of Pub. L. 99-272 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to medical assistance furnished on or after the first calendar quarter that begins more than 90 days after the date of the enactment of this Act [Apr. 7, 1986]."

Section 9529(b)(3) of Pub. L. 99-272 provided that: "This subsection, and the amendments made by this subsection [amending this section and enacting provisions set out as a note below], shall apply to adoption assistance agreements entered into before, on, or after the date of the enactment of this Act [Apr. 7, 1986]."

Amendment by section 12305(b)(3) of Pub. L. 99-272 applicable to medical assistance furnished in or after the first calendar quarter beginning more than 90 days after Apr. 7, 1986, see section 12305(c) of Pub. L. 99-272, set out as a note under section 673 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98-369, see section 3(c) of Pub. L. 98-617, set out as a note under section 1395f of this title.

Amendment by section 2303(g)(1) of Pub. L. 98-369 applicable to clinical diagnostic laboratory tests furnished on or aftor July 1, 1984, but not applicable to clinical diagnostic laboratory tests furnished to inpatients of a provider operating under a waiver granted pursuant to section 602(k) of Pub. L. 98-21, set out as a note under section 1395y of this title, see section 2303(j)(1) and (3) of Pub. L. 98-369, set out as a note under section 1395*l* of this title.

Section 2314(c)(3) of Pub. L. 98-369 provided that:

"(A) Except as provided in subparagraph (B), the amendments made by subsection (b) [amending subsec. (a)(13) of this section] shall apply to medical assistance furnished on or after October 1, 1984.

"(B) In the case of a Stato plan for medical assistance under title XIX of the Social Security Act [this subchaptor] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirement imposed by the amendments made by this section [amending sections 1395x and 1396a of this title and enacting provisions set out as a noto under section 1395x of this title], 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 [July 18, 1984]."

Amendment by section 2335(e) 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.

Section 2361(d) of Pub. L. 98-369 provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending sections 606, 1396a, and 1396d of this title] shall apply to calendar quarters beginning on or after October 1, 1984, 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 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 [July 18, 1984]."

Section 2362(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [adding subsec. (e)(4) of this section] shall apply to children born on or after October 1, 1984."

Amendment by section 2363(a)(1) of Pub. L. 98-369 applicable to calendar quarters beginning on or after July 18, 1984, except that, in the case of individuals admitted to skilled nursing facilities before that date, the amendment shall not require recertifications sooner or more frequently than were required under the law in effect before that date, see section 2363(c) of Pub. L. 98-369, set out as a note under section 1396b of this title.

Section 2367(c) of Pub. L. 98-369 provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending sections 1396a and 1396k of this title] shall become effective on October 1, 1984.

"(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 requirement 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 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 [July 18, 1984]."

Section 2368(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending subsec. (a)(26) and (31) of this section] shall become effective on the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2651(c) of Pub. L. 98-369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(*l*)(2) of Pub. L. 98-369, set out as an Effective Date note under section 1320b-7 of this title.

STATE UTILIZATION REVIEW SYSTEMS

Section 9432 of Pub. L. 99-509 provided that:

"(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') may not, during the period beginning with the date of the enactment of this Act [Oct. 21, 1986] and ending with the date that is 180 days after the day on which the report required by subsection (b) is submitted to the Congress, publish final or interim final regulations requiring a State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] to include a program requiring second surgical opinions or a program of inpatient hospital preadmission review.

"(b) REPORT.—

"(1) The Secretary shall report to Congress, by not later than October 1, 1988, for each State in a representative sample of States—

"(A) the identity of those procedures which are high volume or high cost procedures among patients who are covered under the Stato medicaid plan,

"(B) the payment rates under those plans for such procedures, and the aggregate annual payment amounts made under such plans for such procedures (including the Federal share of such payment amounts),

"(C) the rate at which each such procedure is performed on medicaid patients and (to the extent that data are available) comparisons to the rate at which such procedure is performed on patients of comparable age who are not medicaid patients,

"(D) with respect to each such procedure—

"(i) the number of board certified or board eligible physicians in the State who provide care and services to medicaid patients and who perform the procedure, and

"(ii) in the case of a State with a mandatory second surgical opinion program in operation, the number of physicians described in clause (i) who provide second opinions (of the type described in section 1164 of the Social Security Act [42 U.S.C. 1320c-13]) for the procedure at prevailing payment rates under the State medicaid plan, and

"(E) in the case of a State with a mandatory second surgical opinion program or a program of inpatient hospital preadmission review in operation, a description of—

"(i) the extent to which such program impedes access to necessary care and services, and

"(ii) the measures that the State has taken to address such impediments, particularly in rural areas.

"(2) Such report shall also include a list of those surgical procedures which the Secretary believes meet the following criteria and for which a mandatory second opinion program under medicaid plans may be appropriate:

"(A) The procedure is one which generally can be postponed without undue risk to the patient.

"(B) The procedure is a high volume procedure among patients who are covered under State medicaid plans or is a high cost procedure.

"(C) The procedure has a comparatively high rate of nonconfirmation upon examination by another qualified physician, there is substantial geographic variation in the rates of performance of the procedure, or there are other reasons why requiring second opinions for 100 percent of such procedures would be cost effective.

"(3) The representative sample of States required to be included in the report shall include States with mandatory second surgical opinion programs in operation, States with programs of inpatient hospital preadmission review in operation, and States with neither such program in operation.

"(4) In this subsection, the term 'medicaid plan' means a Stato plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].

"(c) STUDY.—

"(1) The Secretary shall conduct a study of the utilization of selected medical treatments and surgical procedures by medicaid beneficiaries in order to assess the appropriateness, necessity, and effectiveness of such treatments and procedures.

"(2) The study shall analyze the extent to which there is significant variation in the rate of utilization by medicaid beneficiaries of selected treatments and procedures for different geographic areas within States and among Statos.

"(3) The study shall also identify underutilized, medically necessary treatments and procedures for which—

"(A) a fallure te furnish could have an adverse effect on health status, and

"(B) the rate of utilization by medicaid beneficiaries is significantly less than the rato for comparable, age-adjusted populations.

"(4) The study shall be coordinated, to the extent practicable, with the research program established pursuant te section 1875(c) of the Social Security Act [42 U.S.C. 1395*ll*(c)], with particular regard to the relationship of the variations described in paragraph (2) to patient outcomes.

"(5) The Secretary shall report the results of the study to the Congress not later than January 1, 1990."

PROMULGATION OF REGULATIONS

Section 9503(c) of Pub. L. 99-272 provided that: "The Secretary of Health and Human Services shall promulgate final regulations necessary to carry out sections 1902(a)(25) and 1903(r)(6)(J) of the Social Security Act [42 U.S.C. 1396a(a)(25), 1396b(r)(6)(J)] within 6 months after the date of the enactment of this Act [Apr. 7, 1986]."

STUDY BY COMPTROLLER GENERAL OF EFFECT OF AMENDMENT TO SUBSECTION (a)(13)

Section 9509(c) of Pub. L. 99-272 provided that: "The Comptroller General shall conduct a study of the effects of the amendments made by this section [amending this section], and shall report the results of such study to the Congress two years after the date of the enactment of this Act [Apr. 7, 1986]."

TASK FORCE ON TECHNOLOGY-DEPENDENT CHILDREN

Section 9520 of Pub. L. 99-272 provided that:

"(a) APPOINTMENT OF TASK FORCE.—The Secretary of Health and Human Services, within six months after the date of the enactment of this Act [Apr. 7, 1986], shall estahlish a task force concerning alternatives to institutional care for technology-dependent children (as defined in subsection (e)).

"(b) MEMBERSHIP.—The task fcrce shall include representatives of Federal and State agencies with responsibilities relating to child health, health insurers, large employers (including those that self-insure for health care costs), providers of health care to technology-dependent children, and parents of technology-dependent children.

"(c) FUNCTIONS OF TASK FORCE.—The task force shall—

"(1) identify barriers that prevent the provision of appropriate care in a home or community sctting to meet the special needs of technology-dependent children; and

"(2) recommend changes in the provision and financing of health care in private and public health care programs (including appropriate joint public-private initiatives) so as to provide home and community-based alternatives te the institutionalization of technology-dependent children.

"(d) REPORT.—The task force shall make a final report to the Secretary and to the Congress on its activities not later than two years after the date of the enactment of this Act [Apr. 7, 1988].

"(e) DEPINITION.—In this section, the term 'technology-dependent child' means a child who has a chronic illness which makes the child dependent upon the continuing use of medical care technology (such as a ventilator)."

MEDICAID COVERAGE RELATING TO ADOPTION ASSISTANCE AGREEMENTS ENTERED INTO BEFORE APRIL 7, 1986

Section 9529(b)(2) of Pub. L. 99-272 provided that: "In the case of an adoption assistance agreement (other than an agreement under part E of title IV of the Social Security Act [42 U.S.C. 670 et seq.]) entered into before the date of the enactment of this Act [Apr. 7, 1986]—

"(A) the requirements of subdivisions (aa) and (bb) of section 1902(a)(10)(A)(ii)(VIII) of the Social Security Act [42 U.S.C. 1396a(a)(10)(A)(ii)(VIII)(aa), (bb)] shall be deemed to be met if the State agency responsible for adoption assistance agreements determines that—

"(i) at the time of adoptive placement the child had special needs for medical or rehabilitative care that made the child difficult to place; and

"(ii) there is in effect with respect to such child an adoption assistance agreement between the State and an adoptive parent or parents; and

"(B) the requirement of subdivision (cc) of such section shall be deemed to be met if the child was found by the State to be eligible for medical assistance prior to such agreement being entered into."

PAYMENT FOR PSYCHIATRIC HOSPITAL SERVICES

Section 2366 of Pub. L. 98-369 provided that: "The provisions of section 1902(a)(13) of the Social Security Act [42 U.S.C. 1396a(a)(13)], in so far as they require a reduction of the amount of payment otherwise to be made to a public psychiatric hospital due to the level of care received in such hospital, shall not apply to payments to hospitals before July 1, 1985, and such a reduction made for payments during the 12-month period ending June 30, 1986, and during the 12-month period ending Junc 30, 1987, shall be one-third and two-thirds, respectively, of the amount of the reduction which would have been made without regard to this section."

MORATORIUM ON REGULATORY ACTIONS BY SECRETARY

Section 2373(c) of Puh. L. 98-369 provided that:

'(1) The Secretary of Health and Human Services shall not take any compliance, disallowance, penalty, or other regulatory action against a State during the moratorium period described in paragraph (2) by reason of such State's plan under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] being determined to be in violation of section 1902(a)(10)(C)(i)(III) of such Act [42 U.S.C. 1396a(a)(10)(C)(i)(III)] on account of such plan's having a standard or methodology which the Secre-

tary interprets as being less restrictive than the standard or methodology required under such section.

"(2) The moratorium period is the period beginning on the date of the enactment of this Act [July 18, 1984] and ending 18 months after the date on which the Secretary submits the report required under paragraph (3).

"(3) The Secretary shall report to the Congress within 12 months after the date of the enactment of this Act [July 18, 1984] with respect to the appropriateness, and impact on States and recipients of medical assistance, of applying standards and methodologies utilized in cash assistance programs to those recipients of medical assistance who do not receive cash assistance, and any recommendations for changes in such requirements.

"(4) No provision of law shall repeal or suspend the moratorium imposed by this subsection unless such provision specifically amends or repeals this subsection."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300e-17, 705, 1315, 1320a-7a, 1382h, 1382i, 1395v, 1395cc, 1395tt, 1396b, 1396c, 1396d, 1396g, 1396i, 1396*l*, 1396n, 1396*o*, 1396r-1, 4728, 6022, 6042 of this title; title 8 section 1255a.

§ 1396b. Payment to States

(a) Computation of amount

From the sums appropriated therefor, the Secretary (except as otherwise provided in this section) shall pay to each State which has a plan approved under this subchapter, for each quarter, beginning with the quarter commencing January 1, 1966—

(1) an amount equal to the Federal medical assistance percentage (as defined in section 1396d(b) of this title, subject to subsections (g), (h), and (j) of this section) of the total amount expended during such quarter as medical assistance under the State plan (including expenditures for deductible amounts under part A and premiums under part B (and, in the case of qualified medicare beneficiaries described in section 1396d(p)(1) of this title, part A) 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, or part A of subchapter IV, or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, (B) are qualified medicare beneficiaries described in section 1396d(p)(1) of this title, or (C) 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 sixty-five years of age or older and disabled individuals entitled to hospital 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); plus

[*See main edition for text of* (2)]

(3) an amount equal to—

[*See main edition for text of* (A) *and* (B)]

(C) 75 per centum of the sums expended with respect to costs incurred during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to the performance of medical and utilization review or quality review by a utilization and quality control peer review organization under a contract entered into under section 1396a(d) of this title; plus

(4) an amount equal to 100 percent of the sums expended during the quarter which are attributable to the costs of the implementation and operation of the immigration status verification system described in section 1320b-7(d) of this title; plus

[*See main edition for text of* (5) *to* (7); (b) *and* (c)]

(d) Estimates of State entitlement; installments; adjustments to reflect overpayments or underpayments; time for recovery or adjustment; uncollectable or discharged debts; obligated appropriations; disputed claims

[*See main edition for text of* (1)]

(2)(A) The Secretary shall then pay to the State, in such installments as he may determine, the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(B) Expenditures for which payments were made to the State under subsection (a) of this section shall be treated as an overpayment to the extent that the State or local agency administering such plan has been reimbursed for such expenditures by a third party pursuant to the provisions of its plan in compliance with section 1396a(a)(25) of this title.

(C) For purposes of this subsection, when an overpayment is discovered, which was made by a State to a person or other entity, the State shall have a period of 60 days in which to recover or attempt to recover such overpayment before adjustment is made in the Federal payment to such State on account of such overpayment. Except as otherwise provided in subparagraph (D), the adjustment in the Federal payment shall be made at the end of the 60 days, whether or not recovery was made.

(D) In any case where the State is unable to recover a debt which represents an overpayment (or any portion thereof) made to a person or other entity on account of such debt having been discharged in bankruptcy or otherwise being uncollectable, no adjustment shall be made in the Federal payment to such State on account of such overpayment (or portion thereof).

[*See main edition for text of* (3) *to* (5); (e)]

(f) Limitation on Federal participation in medical assistance

[*See main edition for text of (1) to (3)*]

(4) The limitations on payment imposed by the preceding provisions of this subsection shall not apply with respect to any amount expended by a State as medical assistance for any individual described in section 1396a(a)(10)(A)(ii)(IX) of this title or for any individual—

[*See main edition for text of (A) to (C)*]

at the time of the provision of the medical assistance giving rise to such expenditure.

(g) Decrease in Federal medical assistance percentage of amounts paid for services furnished under State plan after June 30, 1973

(1) Subject to paragraph (3), with respect to amounts paid for the following services furnished under the State plan after June 30, 1973 (other than services furnished pursuant to a contract with a health maintenance organization as defined in section 1395mm of this title or which is a qualified health maintenance organization (as defined in section 300e-9(d) of this title)), the Federal medical assistance percentage shall be decreased as follows: After an individual has received inpatient hospital services or intermediate care facility services for 60 days, skilled nursing facility services for 30 days, or inpatient mental hospital services for 90 days (whether or not such days are consecutive), during any fiscal year, the Federal medical assistance percentage with respect to amounts paid for any such care furnished thereafter to such individual shall be decreased by a per centum thereof (determined under paragraph (5)) unless the State agency responsible for the adininistration of the plan makes a showing satisfactory to the Secretary that, with respect to each calendar quarter for which the State submits a request for payment at the full Federal medical assistance percentage for amounts paid for inpatient hospital services, skilled nursing facility services, or intermediate care facility services furnished beyond 60 days (or inpatient mental hospital services furnished beyond 90 days), such State has an effective program of medical review of the care of patients in mental hospitals, skilled nursing facilities, and intermediate care facilities pursuant to paragraphs (26) and (31) of section 1396a(a) of this title whereby the professional management of each case is reviewed and evaluated at least annually by independent professional review teams. In determining the number of days on which an individual has received services described in this subsection, there shall not be counted any days with respect to which such individual is entitled to have payments made (in whole or in part) on his behalf under section 1395d of this title.

[*See main edition for text of (2) and (3)*]

(4) [*See main edition for text of (A)*]

(B) The Secretary shall find a showing of a State, with respect to a calendar quarter under paragraph (1), to be satisfactory under such paragraph with respect to the requirement that the State conduct annual onsite inspections in mental hospitals, skilled nursing facilities, and intermediate care facilities under paragraphs (26) and (31) of section 1396a(a) of this title, if the showing demonstrates that the State has conducted such an onsite inspection during the 12-month period ending on the last date of the calendar quarter—

(i) in each of not less than 98 per centum of the number of such hospitals and facilities requiring such inspection, and

(ii) in every such hospital or facility which has 200 or more beds,

and that, with respect to such hospitals and facilities not inspected within such period, the State has exercised good faith and due diligence in attempting to conduct such inspection, or if the State demonstrates to the satisfaction of the Secretary that it would have made such a showing but for failings of a technical nature only.

[*See main edition for text of (5)*]

(6)(A) Recertifications required under section 1396a(a)(44) of this title shall be conducted at least every 60 days in the case of inpatient hospital services.

(B) Such recertifications in the case of skilled nursing facility services shall be conducted at least—

(i) 30 days after the date of the initial certification,

(ii) 60 days after the date of the initial certification,

(iii) 90 days after the date of the initial certification, and

(iv) every 60 days thereafter.

(C) Such recertifications in the case of intermediate care facility services shall be conducted at least—

(i) 60 days after the date of the initial certification,

(ii) 180 days after the date of the initial certification,

(iii) 12 months after the date of the initial certification,

(iv) 16 months after the date of the initial certification,

(v) 24 months after the date of the initial certification, and

(vi) every 12 months thereafter.

(D) For purposes of determining compliance with the schedule established by this paragraph, a recertification shall be considered to have been done on a timely basis if it was performed not later than 10 days after the date the recertification was otherwise required and the State establishes good cause why the physician or other person making such recertification did not meet such schedule.

(7) It is the duty and responsibility of the Secretary to assure that standards which govern the provision of care in skilled nursing facilities and intermediate care facilities under plans approved under this subchapter, and the enforcement of such standards, are adequate to protect the health and safety of residents and

to promote the effective and efficient use of public moneys.

[*See main edition for text of (h)*]

(l) Payment for organ transplants; services performed after December 31, 1972; restrictions

Payment under the preceding provisions of this section shall not be made—

(1) for organ transplant procedures unless the State plan provides for written standards respecting the coverage of such procedures and unless such standards provide that—

(A) similarly situated individuals are treated alike; and

(B) any restriction, on the facilities or practitioners which may provide such procedures, is consistent with the accessibility of high quality care to individuals eligible for the procedures under the State plan.[5]

[*See main edition for text of (2) to (5)*]

(6) with respect to any amount expended for inpatient hospital tests (other than in emergency situations) not specifically ordered by the attending physician or other responsible practitioner; or

(7) with respect to any amount expended for clinical diagnostic laboratory tests performed by a physician, independent laboratory, or hospital, to the extent such amount exceeds the amount that would be recognized under section 1395*l*(h) of this title for such tests performed for an individual enrolled under part B of subchapter XVIII of this chapter.

[*See main edition for text of (j) to (l)*]

(m) "Health maintenance organization" defined; duties and functions of Secretary; payments to States; provisional determination of status by State

[*See main edition for text of (1)*]

(2)(A) Except as provided in subparagraphs (B), (C), and (G) no payment shall be made under this subchapter to a State with respect to expenditures incurred by it for payment (determined under a prepaid capitation basis or under any other risk basis) for services provided by any entity (including a health insuring organization) which is responsible for the provision (directly or through arrangements with providers of services) of inpatient hospital services and any other service described in paragraph (2), (3), (4), (5), or (7) of section 1396d(a) of this title or for the provision of any three or more of the services described in such paragraphs unless—

[*See main edition for text of (i) and (ii)*]

(iii) such services are provided for the benefit of individuals eligible for benefits under this subchapter in accordance with a contract between the State and the entity under which prepaid payments to the entity are made on an actuarially sound basis and under which the Secretary must provide prior approval for contracts providing for expenditures in excess of $100,000;

[*See main edition for text of (iv) and (v)*]

(vi) such contract (I) except as provided under subparagraph (F), permits individuals who have elected under the plan te enroll with the entity for provision of such benefits to terminate such enrollment without cause as of the beginning of the first calendar month following a full calendar month after the request is made for such termination, and (II) provides for notification of each such individual, at the time of the individual's enrollment, of such right to terminate such enrollment;

(vii) such contract provides that, in the case of medically necessary services which were provided (I) to an individual enrolled with the entity under the contract and entitled to benefits with respect to such services under the State's plan and (II) other than through the organization because the services were immediately required due to an unforeseen illness, injury, or condition, either the entity or the State provides for reimbursement with respect to those services,[6] and

(viii) such contract provides for disclosure of information in accordance with section 1320a-3 of this title and paragraph (4) of this subsection.

(B) Subparagraph (A) does not apply with respect to payments under this subchapter to a State with respect to expenditures incurred by it for payment for services provided by an entity which—

(i)(I) received a grant of at least $100,000 in the fiscal year ending June 30, 1976, under section 254b(d)(1)(A) or 254c(d)(1) of this title, and for the period beginning July 1, 1976, and ending on the expiration of the period for which payments are to be made under this subchapter has been the recipient of a grant under either such section; and

(II) provides to its enrollees, on a prepaid capitation risk basis or on any other risk basis, all of the services and benefits described in paragraphs (1), (2), (3), (4)(C), and (5) of section 1396d(a) of this title and, to the extent required by section 1396a(a)(13)(A)(ii) of this title to be provided under a State plan for medical assistance, the services and benefits described in paragraph (7) of section 1396d(a) of this title; or

[*See main edition for text of (ii) and (iii)*]

(C) Subparagraph (A)(ii) shall not apply with respect to payments under this subchapter to a State with respect to expenditures incurred by it for payment for services by an entity during the three-year period beginning on October 8, 1976, or beginning on the date the entity qualifies as a health maintenance organization (as determined by the Secretary), whichever occurs later, but only if the entity demonstrates to the satisfaction of the Secretary by the submission of plans for each year of such three-year period

[5] So in original. The period probably should be "; or".

[6] So in original. The comma probably should be a semicolon.

that it is making continuous efforts and progress toward achieving compliance with subparagraph (A)(ii).

[*See main edition for text of (D)*]

(E) In the case of a health maintenance organization that—

(i) is a nonprofit organization with at least 25,000 members,

(ii) is and has been a qualified health maintenance organization (as defined in section 300e-9(d) of this title) for a period of at least four years,

(iii) provides basic health services through members of the staff of the organization,

(iv) is located in an area designated as medically underserved under section 300e-1(7) of this title, and

(v) previously received a waiver of the requirement described in subparagraph (A)(ii) under section 1315 of this title,

the Secretary may modify or waive the requirement described in subparagraph (A)(ii) but only if the Secretary determines that special circumstances warrant such modification or waiver and that the organization has taken and is taking reasonable efforts to enroll individuals who are not entitled to benefits under the State plan approved under this subchapter or under subchapter XVIII of this chapter.

(F) In the case of a contract with an entity described in subparagraph (G) or with a qualified health maintenance organization (as defined in section 300e-9(d) of this title) which meets the requirement of subparagraph (A)(ii), a State plan may restrict the period in which requests for termination of enrollment without cause under subparagraph (A)(vi)(I) are permitted to the first month of each period of enrollment, each such period of enrollment not to exceed six months in duration, but only if the State provides notification, at least twice per year, to individuals enrolled with such entity or organization of the right to terminate such enrollment and the restriction on the exercise of this right. Such restriction shall not apply to requests for termination of enrollment for cause.

(G) In the case of an entity which is receiving (and has received during the previous two years) a grant of at least $100,000 under section 254b(d)(1)(A) or 254c(d)(1) of this title or is receiving (and has received during the previous two years) at least $100,000 (by grant, subgrant, or subcontract) under the Appalachian Regional Development Act of 1965, clauses (i) and (ii) of subparagraph (A) shall not apply.

[*See main edition for text of (3)*]

(4)(A) Each health maintenance organization which is not a qualified health maintenance organization (as defined in section 300e-9(d) of this title) must report to the State and, upon request, to the Secretary, the Inspector General of the Department of Health and Human Services, and the Comptroller General a description of transactions between the organization and a party in interest (as defined in section 300e-17(b) of this title), including the following transactions:

(i) Any sale or exchange, or leasing of any property between the organization and such a party.

(ii) Any furnishing for consideration of goods, services (including management services), or facilities between the organization and such a party, but not including salaries paid to employees for services provided in the normal course of their employment.

(iii) Any lending of money or other extension of credit between the organization and such a party.

The State or Secretary may require that information reported respecting an organization which controls, or is controlled by, or is under common control with, another entity be in the form of a consolidated financial statement for the organization and such entity.

(B) Each organization shall make the information reported pursuant to subparagraph (A) available to its enrollees upon reasonable request.

(5)(A) Any entity with a contract under this subsection that fails substantially to provide medically necessary items and services that are required (under law or such contract) to be provided to individuals covered under such contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals, is subject to a civil money penalty of not more than $10,000 for each such failure.

(B) The provisions of section 1320a-7a of this title (other than subsection (a)) shall apply to a civil money penalty under subparagraph (A) in the same manner as they apply to a civil money penalty under that section.

[*See main edition for text of (n) to (q)*]

(r) Mechanized claims processing and information retrieval systems; operational, etc., requirements

(1) [*See main edition for text of (A)*]

(B) The deadline for operation of such systems for a State is September 30, 1985.

[*See main edition for text of (C), (2) and (3)*]

(4)(A) The Secretary shall review all approved systems not less often than once every three years, and shall reapprove or disapprove any such systems. Systems which fail to meet the current performance standards, system requirements, and any other conditions for approval developed by the Secretary under paragraph (6) shall be disapproved. Any State having systems which are so disapproved shall be subject to a per centum reduction under subparagraph (B). The Secretary shall make the determination of reapproval or disapproval and so notify the States not later than the end of the first quarter following the review period. Reviews may, at the Secretary's discretion, constitute reviews of the entire system or of only those standards, systems requirements, and other conditions which have demonstrated weakness in previous reviews.

[*See main edition for text of (B) and (C), (5)*]

(6) The Secretary, with respect to State systems, shall—

[*See main edition for text of (A) to (I)*]

(J) develop and disseminate performance standards for assessing the State's third party collection efforts in accordance with section 1396a(a)(25)(A)(ii) of this title.

[*See main edition for text of (7) and (8)*]

(s) **Repealed. Pub. L. 97-35, title XXI, § 2161(c)(1), Aug. 13, 1981, 95 Stat. 805, as amended by Pub. L. 97-248, title I, § 137(a)(2), Sept. 3, 1982, 96 Stat. 376**

(t) **Repealed. Pub. L. 97-35, title XXI, § 2161(c)(2), Aug. 13, 1981, 95 Stat. 805, as amended by Pub. L. 97-248, title I, § 137(a)(2), Sept. 3, 1982, 96 Stat. 376**

(u) **Limitation of Federal financial participation in erroneous medical assistance expenditures**

(1) [*See main edition for text of (A) to (C)*]

(D) [*See main edition for text of (i) to (iii)*]

(iv) In determining the amount of erroneous excess payments, there shall not be included any error resulting from a failure of an individual to cooperate or give correct information with respect to third-party liability as required under section 1396k(a)(1)(C) or 602(a)(26)(C) of this title.

(v) In determining the amount of erroneous excess payments, there shall not be included any erroneous payments made for ambulatory prenatal care provided during a presumptive eligibility period (as defined in section 1396r-1(b)(1) of this title).

[*See main edition for text of (E), (2) to (4)*]

(v) **Medical assistance to aliens not lawfully admitted for permanent residence**

(1) Notwithstanding the preceding provisions of this section, except as provided in paragraph (2), no payment may be made to a State under this section for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

(2) Payment shall be made under this section for care and services that are furnished to an alien described in paragraph (1) only if—

(A) such care and services are necessary for the treatment of an emergency medical condition of the alien, and

(B) such alien otherwise meets the eligibility requirements for medical assistance under the State plan approved under this subchapter (other than the requirement of the receipt of aid or assistance under subchapter IV of this chapter, supplemental security income benefits under subchapter XVI of this chapter, or a State supplementary payment).

(3) For purposes of this subsection, the term "emergency medical condition" means a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

(A) placing the patient's health in serious jeopardy,

(B) serious impairment to bodily functions, or

(C) serious dysfunction of any bodily organ or part.

(Aug. 14, 1935, ch. 531, title XIX, § 1903, as added July 30, 1965, Pub. L. 89-97, title I, § 121(a), 79 Stat. 349, and amended Jan. 2, 1968, Pub. L. 90-248, title II, §§ 220(a), 222(c), (d), 225(a), 229(c), 241(f)(5), 81 Stat. 898, 901, 902, 904, 917; June 28, 1968, Pub. L. 90-364, title III, § 303(a)(1), 82 Stat. 274; Aug. 9, 1969, Pub. L. 91-56, § 2(a), 83 Stat. 99; Oct. 30, 1972, Pub. L. 92-603, title II, §§ 207(a), 221(c)(6), 224(c), 225, 226(e), 229(c), 230, 233(c), 235(a), 237(a)(1), 249B, 278(b)(1), (5), (7), (16), 290, 295, 299E(a), 86 Stat. 1379, 1389, 1395, 1396, 1404, 1419, 1411, 1414, 1415, 1428, 1453, 1454, 1457, 1459, 1462; July 9, 1973, Pub. L. 93-66, title II, § 234(a), 87 Stat. 160; Dec. 31, 1973, Pub. L. 93-233, §§ 13(a)(11), (12), 18(r)-(v), (x)(5), (6), (y)(1), 87 Stat. 963, 971-973; Dec. 31, 1975, Pub. L. 94-182, title I, §§ 110(a), 111(b), 89 Stat. 1054; Oct. 8, 1976, Pub. L. 94-460, title II, § 202(a), 90 Stat. 1957; Oct. 18, 1976, Pub. L. 94-552, § 1, 90 Stat. 2540; Aug. 1, 1977, Pub. L. 95-83, title I, § 105(a)(1), (2), 91 Stat. 384; Oct. 25, 1977, Pub. L. 95-142, §§ 3(c)(2), 8(c), 10(a), 11(a), 17(a)-(c), 20(a), 91 Stat. 1179, 1195, 1196, 1201, 1205; Nov. 1, 1978, Pub. L. 95-559, § 14(c), 92 Stat. 2141; Nov. 10, 1978, Pub. L. 95-626, title I, § 102(b)(3), 92 Stat. 3551; Oct. 4, 1979, Pub. L. 96-79, title I, § 128, 93 Stat. 629; Oct. 7, 1980, Pub. L. 96-398, title IX, § 991, 94 Stat. 1609; Dec. 5, 1980, Pub. L. 96-499, title IX, §§ 905(b), (c), 961(a), 963, 964, 94 Stat. 2618, 2650, 2651; Aug. 13, 1981, Pub. L. 97-35, title XXI, §§ 2101(a)(2), 2103(b)(1), 2106(b)(3), 2113(n), 2161, 2163, 2164(a), 2174(b), 2178(a), 2183(a), 95 Stat. 786, 788, 792, 795, 803-806, 809, 813, 816; Sept. 3, 1982, Pub. L. 97-248, title I, §§ 133(a), 137(a)(1), (2), (b)(11)-(16), (27), (g), 146(b), 96 Stat. 373, 376, 378, 379, 381, 394; Jan. 12, 1983, Pub. L. 97-443, title III, § 399(b)(16), 96 Stat. 2409; July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2303(g)(2), 2363(a)(2), (4), (b), 2364, 2373(b)(11)-(14), 98 Stat. 1066, 1106, 1107, 1111, 1112; Nov. 8, 1984, Pub. L. 98-617, § 3(a)(6), 98 Stat. 3295; Apr. 7, 1986, Pub. L. 99-272, title IX, §§ 9503(b), (f), 9507(a), 9512(a), 9517(a), (c)(1), 9518(a), 190 Stat. 206, 207, 210, 212, 215, 216; Oct. 21, 1986, Pub. L. 99-509, title IX, §§ 9401(e)(2), 9493(g)(2), 9406(a), 9407(c), 9431(b)(2), 9434(a)(1), (2), (b), 100 Stat. 2052, 2055, 2057, 2069, 2066, 2068, 2069; Oct. 22, 1986, Pub. L. 99-514, title XVIII, § 1895(c)(2), 100 Stat. 2935; Nov. 6, 1986, Pub. L. 99-603, title I, § 121(b)(2), 100 Stat. 3390.)

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in subsecs. (a) and (f), 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), (b), (l), and (m), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

The Appalachian Regional Development Act of 1965, referred to in subsec. (m)(2)(B)(ii), (G), is Pub. L. 89-4, Mar. 9, 1965, 79 Stat. 5, as amended, which is set out in

the Appendix to Title 40, Public Buildings, Property, and Works. For complete classification of this act to the Code, see Tables.

AMENDMENTS

1986—Subsec. (a)(1). Pub. L. 99-509, § 9403(g)(2), inserted "deductible amounts under part A and" after "(including expendiures for", inserted "(and, in the case of qualified medicare beneficiaries described in section 1396d(p)(1) of this title, part A)" after "premiums under part B", and substituted "(B) are qualified medicare beneficiaries described in section 1396d(p)(1) of this title, or (C)" for "or (B)".

Subsec. (a)(3)(C). Pub. L. 99-509, § 9431(b)(2), inserted "or quality review" after "medical and utilization review".

Subsec. (a)(4). Pub. L. 99-603 added par. (4).

Subsec. (d)(2). Pub. L. 99-272, § 9512(a), designated first sentence as subpar. (A), designated second sentence as subpar. (B), properly indented and aligned below subpar. (A), and added subpars. (C) and (D).

Subsec. (f)(4). Pub. L. 99-509, § 9401(e)(2), inserted "for any individual described in section 1396a(a)(10)(A)(ii)(IX) of this title or" after "as medical assistance".

Subsec. (i)(1). Pub. L. 99-272, § 9507(a), added par. (1).

Subsec. (m)(2)(A). Pub. L. 99-272, § 9517(a)(1), substituted "subparagraphs (B), (C), and (G)" for "subparagraphs (B) and (C)" in introductory text.

Pub. L. 99-272, § 9517(c)(1), inserted "(including a health insuring organization)" after "any entity" and "(directly or through arrangements with providers of services)" after "responsible for the provision" in introductory text.

Subsec. (m)(2)(A)(iii). Pub. L. 99-509, § 9434(a)(2), inserted before the semicolon "and under which the Secetary must provide prior approval for contracts providing for expenditures in excess of $100,000".

Subsec. (m)(2)(A)(viii). Pub. L. 99-509, § 9434(a)(1)(A), added cl. (viii).

Subsec. (m)(2)(F). Pub. L. 99-514, § 1895(o)(2), substituted "In tbe case" for "in the case".

Pub. L. 99-272, § 9517(a)(2), struck out designation "(i)" at beginning of subpar. (F), substituted "in the case of a contract with an entity described in subparagraph (G) or with a qualified health maintenance organization (as defined in section 300e-9(d) of this title) which meets the requirement of subparagraph (A)(ii)" for "In the case of a contract with a health maintenance organization described in clause (ii)", substituted "such entity or organization" for "such organization", and struck out cl. (ii) which defined a health maintenance organization.

Subsec. (m)(2)(G). Pub. L. 99-272, § 9517(a)(3), added subpar. (G).

Subsec. (m)(4). Pub. L. 99-509, § 9434(a)(1)(B), added par. (4).

Subsec. (m)(5). Pub. L. 99-509, § 9434(b), added par. (5).

Subsec. (r)(1)(B). Pub. L. 99-272, § 9518(a), substituted "September 30, 1985" for "the earlier of (i) September 30, 1982, or (ii) the last day of the sixth month following the date specified for operation of such systems in the State's most recently approved advance planning document submitted before October 7, 1980".

Subsec. (r)(4)(A). Pub. L. 99-272, § 9503(b)(2), substituted "once every three years" for "once each fiscal year" and inserted at end "Reviews may, at the Secretary's discretion, constitute reviews of the entire system or of only those standards, systems requirements, and other conditions which have demonstrated weakness in previous reviews."

Subsec. (r)(6)(J). Pub. L. 99-272, § 9503(b)(1), amended subpar. (J) generally. Prior to amendment, subsec. (J) read as follows: "report on or before October 1, 1981, to the Congress on the extent to which States have developed and operated effective mechanized claims processing and information retrieval systems."

Subsec. (u)(1)(D)(iv). Pub. L. 99-272, § 9503(f), added cl. (iv).

Subsec. (u)(1)(D)(v). Pub. L. 99-509, § 9407(c), added cl. (v).

Subsec. (v). Pub. L. 99-509, § 9406(a), added subsec. (v).

1984—Subsec. (g)(1). Pub. L. 98-369, § 2363(a)(2)(A), (B), in provision preceding subpar. (A), substituted "inpatient hospital services or intermediate care facility services for 60 days, skilled nursing facility services for 30 days, or inpatient mental hospital services for" for "care as an inpatient in a hospital (including an institution for tuberculosis), skilled nursing facility or intermediate care facility on 60 days, or in a hospital for mental diseases on", and struck out "which for purposes of this section means the four calendar quarters ending with June 30," before "the Federal medical assistance percentage", and struck out "in the same fiscal year" before "shall be decreased by a per centum thereof".

Pub. L. 98-369, § 2303(a)(2)(C), substituted ", skilled nursing facility services, or intermediate care facility services furnished beyond 60 days (or inpatient mental hospital services furnished beyond 90 days), such State has an effective program of medical review of the care of patients in mental hospitals, skilled nursing facilities, and intermediate care facilities pursuant to paragraphs (26) and (31) of section 1396a(a) of this title whereby the professional management of each case is reviewed and evaluated at least annually by independent professional review teams" for "(including tuberculosis hospitals), skilled nursing facility services, or intermediate care facility services furnished beyond 60 days (or inpatient mental hospital services furnished beyond 90 days), there is in operation in the State an effective program of control over utilization of such services; such a showing must include evidence that—" and former subpars. (A) through (D) requirement for evidence concerning an effective program of utilization of certain medical services.

Subsec. (g)(4)(B). Pub. L. 98-369, § 2373(b)(11), substituted "paragraphs (28)" for "paragraph (26)" and "diligence" for "deligence".

Subsec. (g)(6). Pub. L. 98-369, § 2363(a)(4), in amending par. (6) generally, substituted provisions relating to recertifications for provisions relating to reports to Congress concerning Secrctary's determination and review of showing respecting any decrease of Federal medical assistance percentage of amounts paid for services.

Subsec. (g)(7). Pub. L. 98-369, § 2363(b), as amended by Pub. L. 98-617, § 3(a)(6), added par. (7).

Subsec. (i)(7). Pub. L. 98-369, § 2303(g)(2), added par. (7).

Subsec. (m)(2)(A)(vi). Pub. L. 98-369, § 2364(1), inserted "except as provided under subparagraph (F)," after "(I)".

Subsec. (m)(2)(B)(i)(I). Pub. L. 98-369, § 2373(b)(12)(A), (C), struck out "(II)" before "for the period" and substituted "period" for "peroid".

Subsec. (m)(2)(B)(i)(II). Pub. L. 98-369, § 2373(b)(12)(B), substituted "of section 1396d(a) of this title" for "of such section".

Subsec. (m)(2)(C). Pub. L. 98-369, § 2373(b)(13), realigned margin of subpar. (C).

Subsec. (m)(2)(E), (F). Pub. L. 98-369, § 2364(2), added subpars. (E) and (F).

Subsec. (s)(3)(B). Pub. L. 98-369, § 2373(b)(14), substituted "non-Federal" for "nonfederal".

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99-603 effective Oct. 1, 1987, see section 121(c)(2) of Pub. L. 99-603, set out as a note under section 502 of this title.

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 1695(e) of Pub. L. 99-514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Amendment by section 9401(e)(2) of Pub. L. 99-509 applicable to medical assistance furnished in calendar quarters beginning on or after Apr. 1, 1987, without regard to whether of not final regulations to carry out such amendment have been promulgated by such date, see section 9401(f) of Pub. L. 99-509, set out as a note under section 1396a of this title.

Amendment by section 9403(g)(2) 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 9406(a) of Pub. L. 99-509, except as otherwise provided, applicable to medical assistance furnished to aliens on or after Jan. 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, see section 9406(c) of Pub. L. 99-509, set out as a note under section 1396a of this title.

Amendment by section 9407(c) of Pub. L. 99-509 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 amendments have been promulgated by such date, see section 9407(d) of Pub. L. 99-509, set out as a note under section 1396a of this title.

Amendment by section 9431(b)(2) 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 9431(c) of Pub. L. 99-509, set out as a note under section 1396a of this title.

Section 9434(a)(3) of Pub. L. 99-599 provided that:

"(A) The amendments made by paragraph (1) [amending this section] shall take effect 6 months after the date of the enactment of this Act [Oct. 21, 1986].

"(B) The amendment made by paragraph (2) [amending this section] shall take effect on the date of the enactment of this Act and shall apply te contracts entered into, renewed, or extended after the end of the 30-day period beginning on the date of the enactment of this Act."

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

Section 9507(b) of Pub. L. 99-272 provided that: "The amendments made by subsection (a) [amending this section] shall apply to medical assistance furnished on or after January 1, 1987."

Section 9512(b) of Pub. L. 99-272 provided that: "The amendments made by this section [amending this section] shall apply to overpayments identified for quarters beginning on or after October 1, 1985."

Section 9517(c)(2) of Pub. L. 99-272, as amended by Pub. L. 99-509, title IX, § 9435(e), Oct. 21, 1986, 100 Stat. 2070; Pub. L. 99-514, title XVIII, § 1895(c)(4), Oct. 22, 1986, 100 Stat. 2935, provided that:

"(A) Except as provided in subparagraph (B), the amendments made by paragraph (1) [amending this section] shall apply to expenditures incurred for health insuring organizations which first become operational on or after January 1, 1986. For purposes of this paragraph, a health insuring organization is not considered to be operational until the dato on which it first enrolls patients.

"(B) In the case of a health insuring organization—

"(i) which first becomes operational on or after January 1, 1986, but

"(ii) for which the Secretary of Health and Human Services has walved, under section 1915(b) of the Social Security Act [42 U.S.C. 1396n(b)] and before such date, certain requirements of section 1902 of such Act [42 U.S.C. 1396a],

clauses (ii) and (vi) of section 1903(m)(2)(A) of such Act [42 U.S.C. 1396b(m)(2)(A)(ii), (vi)] shall not apply during the period for which such waiver is effective.

"(C) In the case of the Hartford Health Network, Inc., clauses (ii) and (vi) of section 1903(m)(2)(A) of the Social Security Act shall not apply during the period for which a waiver by the Secretary of Health and Human Services, under section 1915(b) of such Act, of certain requirements of section 1902 of such Act is in effect (pursuant to a request for a waiver under section 1915(b) of such Act submitted before January 1, 1986).

"(D) Nothing in section 1903(m)(1)(A) of the Social Security Act shall be construed as requiring a health-insuring organization to be organized under the health maintenance organization laws of a State."

Section 9518(b) of Pub. L. 99-272 provided that: "The amendment made by subsection (a) [amending this section] shall apply to payment under section 1903(a) of the Social Security Act [subsec. (a) of this section] for calendar quarters beginning on or after October 1, 1982."

Effective Date of 1984 Amendments

Amendment by Pub. L. 98-617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98-369, see section 3(c) of Pub. L. 98-617, set out as a note under section 1395f of this title.

Amendment by section 2303(g)(2) of Pub. L. 98-369 applicable to payments for calendar quarters beginning on or after Oct. 1, 1984, but not applicable to clinical diagnostic laboratory tests furnished to inpatients of a provider operating under a waiver granted pursuant to section 602(k) of Pub. L. 98-21, set out as a note under section 1395y of this title, see section 2303(j)(2) and (3) of Pub. L. 93-369, set out as a noto under section 1395*l* of this title.

Section 2363(c) of Pub. L. 98-369 provided that: "The amendments made by subsection (a) [amending sections 1396a and 1396b of this title] apply to calendar quarters beginning on or after the date of the enactment of this Act [July 18, 1984], except that, in the case of individuals admitted to skilled nursing facilities before such date, the amendments made by such subsection shall not require recertifications sooner or more frequently than were required under the law in effect before such date."

Effective Date of 1982 Amendment

Amendment by section 137(a)(1), (2) of Pub. L. 97-248 effective as if originally included in the provision of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, to which such amendment relates, see section 137(d)(1) of Pub. L. 97-248, set out as a note under section 1396a of this title.

Effective Date of 1981 Amendment

Section 2161(c)(1) of Pub. L. 97-35, as amended by Pub. L. 97-248, title I, § 137(a)(2), Sept. 3, 1982, 96 Stat. 376, provided in part that repeal of subsec. (s) is effective for calendar quarters beginning on or after Oct. 1, 1984.

Section 2161(c)(2) of Pub. L. 97-35, as amended by Pub. L. 97-248, title I, § 137(a)(2), Sept. 3, 1982, 96 Stat. 376, provided in part that repeal of subsection (t) is effective after payments for the first quarter of fiscal year 1985.

Promulgation of Regulations

Secretary of Health and Human Services to promulgate final regulations necessary to carry out subsec. (r)(6)(j) of this section within 6 months after Apr. 7, 1986, see section 9503(c) of Pub. L. 99-272, set out as a note under section 1396a of this title.

Section Referred to in Other Sections

This section is referred to in sections 832a, 843, 1315, 1320a-7a, 1320c-7, 1396a, 1396o, 1396r-1 of this title.

§ 1396d. Definitions

For purposes of this subchapter—

(a) Medical assistance

The term "medical assistance" means payment of part or all of the cost of the following care and services (if provided in or after the third month before the month in which the recipient makes application for assistance 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) for individuals, and, with respect to physicians' or dentists' services, at the option of the State, to 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, and with respect to whom supplemental security income benefits are not being paid under subchapter XVI of this chapter, who are—

[*See main edition for text of (i) to (viii)*]

but whose income and resources are insufficient to meet all of such cost—

(1) inpatient hospital services (other than services in an institution for mental diseases);

[*See main edition for text of (2) and (3)*]

(4)(A) skilled nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older; (B) 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 (C) family planning services and supplies furnished (directly or under arrangements with others) to individuals of child-bearing age (including minors who can be considered to be sexually active) who are eligible under the State plan and who desire such services and supplies;

[*See main edition for text of (5) to (8)*]

(9) clinic services furnished by or under the direction of a physician, without regard to whether the clinic itself is administered by a physician;

[*See main edition for text of (10) to (13)*]

(14) inpatient hospital services, skilled nursing facility services, and intermediate care facility services for individuals 65 years of age or over in an institution for mental diseases;

(15) intermediate care facility services (other than such services in an institution for mental diseases) for individuals who are determined, in accordance with section 1396a(a)(31)(A) of this title, to be in need of such care;

[*See main edition for text of (16)*]

(17) services furnished by a nurse-midwife (as defined in subsection (m) of this section) which the nurse-midwife is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), whether or not the nurse-midwife is under the supervision of, or associated with, a physician or other health care provider;

(18) hospice care (as defined in subsection (o) of this section);

(19) case-management services (as defined in section 1396n(g)(2) of this title);

(20) respiratory care services (as defined in section 1396a(e)(9)(C) of this title); and

(21) any other medical care, and any other type of remedial care recognized under State law, specified by the Secretary;

except as otherwise provided in paragraph (16), such term does not include—

[*See main edition for text of (A)*]

(B) any such payments with respect to care or services for any individual who has not attained 65 years of age and who is a patient in an institution for mental diseases.

For purposes of clause (vi) of the preceding sentence, a person shall be considered 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 XVI of this chapter), and such person is determined, under such a State plan, to be essential to the well-being of such individual.

(b) Federal medical assistance percentage; State percentage; Indian health care percentage

The term "Federal medical assistance percentage" for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 45 per centum as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii; except that (1) the Federal medical assistance percentage shall in no case be less than 50 per centum or more than 83 per centum, and (2) the Federal medical assistance percentage for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa shall be 50 per centum. The Federal medical assistance percentage for any State shall be determined and promulgated in accordance with the provisions of section 1301(a)(8)(B) of this title. Notwithstanding the first sentence of this section, the Federal medical assistance percentage shall be 100 per centum with respect to amounts expended as medical assistance for services which are received through an Indian Health Service facili-

ty whether operated by the Indian Health Service or by an Indian tribe or tribal organization (as defined in section 1603 of title 25).

[*See main edition for text of* (c)]

(d) Intermediate care facility services

The term "intermediate care facility services" may include services in a public institution (or distinct part thereof) for the mentally retarded or persons with related conditions if—

(1) the primary purpose of such institution (or distinct part thereof) is te provide health or rehabilitative services for mentally retarded individuals and the institution meets such standards as may be prescribed by the Secretary;

[*See main edition for text of* (2) *and* (3); (e) *to* (g)]

(h) Inpatient psychiatric hospital services for individuals under age 21

(1) For purposes of paragraph (16) of subsection (a) of this section, the term "inpatient psychiatric hospital services for individuals under age 21" includes only—

(A) inpatient services which are provided in an institution (or distinct part thereof) which is a psychiatric hospital as defined in section 1395x(f) of this title;

[*See main edition for text of* (B) *and* (C), (2); (i) *to* (l)]

(m) Nurse-midwife

The term "nurse-midwife" means a registered nurse who has successfully completed a program of study and clinical experience meeting guidelines prescribed by the Secretary, or has been certified by an organization recognized by the Secretary, and performs services in the area of management of the care of mothers and babies (throughout the maternity cycle) which the nurse is legally authorized to perform in the State in which the nurse performs such services.

(n) "Qualified pregnant woman or child" defined

The term "qualified preguant woman or child" means—

(1) a pregnant woman who—

(A) would be eligible for aid to families with dependent children under part A of subchapter IV of this chapter (or would be eligible for such ald if coverage under the State plan under part A of subchapter IV of this chapter included ald to families with dependent children of unemployed parents pursuant to section 607 of this title) if her child had been born and was living with her in the month such aid would be paid, and such pregnancy has been medically verified;

(B) is a member of a family which would be eligible for aid under the State plan under part A of subchapter IV of this chapter pursuant to section 607 of this title if the plan required the payment of aid pursuant to such section;

(C) otherwise meets the income and resources requirements of a State plan under part A of subchapter IV of this chapter; and

(2) a child who is under 5 years of age, who was born after September 30, 1983 (or such earlier date as the State may designate), and who meets the income and resources requirements of the State plan under part A of subchapter IV of this chapter.

(o) Optional hospice benefits

(1) The term "hospice care" means the care described in section 1395x(dd)(1) of this title furnished by a hospice program (as defined in section 1395x(dd)(2) of this title) to a terminally ill individual who has voluntarily elected (in accordance with paragraph (2)) to have payment made for hospice care instead of having payment made for certain benefits described in section 1395d(d)(2)(A) of this title and intermediate care facility services under the plan. For purposes of such election, hospice care may be provided to an individual while such individual is a resident of a skilled nursing facility or intermediate care facility, but the only payment made under the State plan shall be for the hospice care.

(2) An individual's voluntary election under this subsection—

(A) shall be made in accordance with procedures that are established by the State and that are consistent with the procedures established under section 1395d(d)(2) of this title;

(B) shall be for such a period or periods (which need not be the same periods described in section 1395d(d)(1) of this title) as the State may establish; and

(C) may be revoked at any time without a showing of cause and may be modified so as to change the hospice program with respect to which a previous election was made.

(3) In the case of 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 an individual—

(A) who is residing in a skilled nursing or intermediate care facility and is receiving medical assistance for services in such facility under the plan,

(B) who is entitled to benefits under part A of subchapter XVIII of this chapter and has elected, under section 1395d(d) of this title, to receive hospice care under such part, and

(C) with respect to whom the hospice program under such subchapter and the skilled nursing or intermediate care facility have entered into a written agreement under which the program takes full responsibility for the professional management of the individual's hospice care and the facility agrees to provide room and board to the individual,

instead of any payment otherwise made under the plan with respect to the facility's services, the State shall provide for payment to the hospice program of an amount equal to 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, if the individual is an individual described in section 1396a(a)(10)(A) of this title, shall provide for payment of any coinsurance amounts imposed under section

1395e(a)(4) of this title. For purposes of this paragraph and section 1396a(a)(1)(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.

(p) Qualified medicare beneficiary; medicare cost-sharing

(1) The term "qualified medicare beneficiary" means an individual—

(A) who is entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter (including an individual entitled to such benefits pursuant to an enrollment under section 1395i-2 of this title),

(B) who, but for section 1396a(a)(10)(E) of this title and the election of the State, is not eligible for medical assistance under the plan,

(C) whose income (as determined under section 1382a of this title for purposes of the supplemental security income program) does not exceed an income level established by the State consistent with paragraph (2)(A), and

(D) whose resources (as determined under section 1382b of this title for purposes of the supplemental security income program) do not exceed (except as provided in paragraph (2)(B)) the maximum amount of resources that an individual may have and obtain benefits under that program.

(2)(A) The income level established under paragraph (1)(C) may not exceed a percentage (not more than 100 percent) of the nonfarm 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.

(B) 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.

(3) The term "medicare cost-sharing" means the following costs incurred with respect to a qualified medicare beneficiary:

(A) Premiums under part B [1] and (if applicable) under section 1395i-2 of this title.

(B) Deductibles and coinsurance described in section 1395e of this title.

(C) The annual deductible described in section 1395*l*(b) of this title.

(D) The difference between the amount that is paid under section 1395*l*(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.

(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 Secretary 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).

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, §§ 2335(f), 2340(b), 2361(b), 2371(a), 2373(b)(15)-(20), 98 Stat. 1091, 1093, 1104, 1110, 1112; Apr. 7, 1986, Pub. L. 99-272, title IX, §§ 9501(a), 9505(a), 9511(a), 100 Stat. 201, 208, 212; Oct. 21, 1986, Pub. L. 99-509, title IX, §§ 9403(b), (d), (g)(3), 9404(b), 9408(c)(1), 9435(b)(2), 100 Stat. 2053, 2054, 2056, 2061, 2070; Oct. 22, 1986, Pub. L. 99-514, title XVIII; § 1895(c)(3)(A), 100 Stat. 2935.)

[1] See References in Text note below.

REFERENCES IN TEXT

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

Part A of subchapter XVIII of this chapter, referred to in subsecs. (o)(3) and (p)(1)(A), is classified to section 1395c et seq. of this title.

Part B, referred to in subsec. (p)(3)(A), probably means part B of subchapter XVIII of this chapter which is classified to section 1395j et seq. of this title.

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.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-509, § 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, § 9505(a)(1), added par. (18). Former par. (18) redesignated (19).

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

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

Subsec. (a)(20). Pub. L. 99-509, § 9408(c)(1), added par. (20). Former par. (20) redesignated (21).

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

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

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

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

Subsec. (o). Pub. L. 99-272, § 9505(a)(2), added subsec. (o).

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

Subsec. (p). Pub. L. 99-509, § 9403(b), (d), added subsec. (p).

Subsec. (q). Pub. L. 99-509, § 9404(b), added subsec. (q).

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

Pub. L. 98-360, § 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, § 2335(f), substituted "mental diseases" for "tuberculosis or mental diseases".

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

Pub. L. 98-389, § 2373(b)(15), inserted a semicolon before "(B)".

Subsec. (a)(9). Pub. L. 98-369, § 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, § 2335(f), substituted "mental diseases" for "tuberculosis or mental diseases".

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

Subsec. (b). Pub. L. 98-369, § 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, § 2373(b)(19), substituted "the institution meets" for "which meet".

Subsec. (h)(1)(A). Pub. L. 98-369, § 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, § 2373(b)(20), substituted "the nurse" for "he" in two places.

Subsec. (n). Pub. L. 98-369, § 2361(b), added subsec. (n).

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) and (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, except as otherwise provided, applicable 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 te 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, § 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 cr 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 subsec. (a)(9) of this section] shall apply to services furnished on or after the date of the enactment of this Act [July 18, 1984]."

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 [42 U.S.C. 1396 et seq.] 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 [42 U.S.C. 1396d(c)], 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."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 674, 1318, 1395x, 1396a, 1396b, 1396l, 1396n, 1396o, 1396r-1, 3022 of this title.

§ 1396i. Certification and approval of skilled nursing facilities and of rural health clinics; cancellation of approval of skilled nursing and intermediate care facilities

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395cc, 1396r of this title.

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

(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;

[*See main edition for text of (B)*]

(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

[*See main edition for text of (2); (b)*]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2367(b), 98 Stat. 1109; Apr. 7, 1986, Pub. L. 99-272, title IX, § 9503(e), 100 Stat. 207.)

AMENDMENTS

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 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.

SECTION REFERRED TO IN OTHER SECTIONS

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

§ 1396l. Hospital providers of skilled nursing and intermediate care services

[*See main edition for text of (a)*]

(b)(1) Except as provided in paragraph (3), payment to any such hospital, for any skilled nursing or intermediate care 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 skilled nursing and intermediate care facilities, respectively, 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.

[*See main edition for text of (2)*]

(3) Payment to all such hospitals, for any skilled nursing or intermediate care 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.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2369(a), 98 Stat. 1110.)

AMENDMENTS

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

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

§ 1396n. Compliance with State plan and payment provisions

(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—

[*See main edition for text of* (A)]

(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 (12) and (13) of section 1395x(s) of this title, and such additional requirements as the Secretary may require, and

[*See main edition for text of* (II), (2)]

(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 as may be necessary for a State—

[*See main edition for text of* (1) *to* (4)]

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 skilled nursing facility or intermediate care facility the cost of which could be reimbursed under the State plan.

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

[*See main edition for text of* (A)]

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

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

[*See main edition for text of* (ii) *and* (iii)]

for an evaluation of the need for inpatient hospital, such skilled nursing facility or intermediate care facility services;

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

(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

[*See main edition for text of* (E)]

(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 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)—

[*See main edition for text of (A)*]

(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.

(5) For purposes of paragraph (4)(B), the term "habilitation services", with respect to individuals who receive such services after discharge from a skilled nursing facility or intermediate care facility—

(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 section 1401(16) and (17) 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) 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 hospitals or in skilled nursing or intermediate care facilities, 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 of those respective facilities.

(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.

[*See main edition for text of (d) to (f)*]

(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, and a State may limit the provision of case management services under this subsection to individuals with chronic mental illness.

(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.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title III, § 2373(b)(21), 98 Stat. 1112; Apr. 7, 1986, Pub. L. 99-272, title IX, §§ 9502(a)-(e), (g)-(i), 9508(a), 100 Stat. 202-204, 210; Oct. 21, 1986, Pub. L. 99-509, title IX, §§ 9320(h)(3), 9411(a)-(d), 100 Stat. 2016, 2061, 2062.)

AMENDMENTS

1986—Subsec. (a)(1)(B)(ii)(I). Pub. L. 99-509, § 9320(h)(3), substituted "paragraphs (12) and (13)" for "paragraphs (11) and (12)".

Subsec. (b). Pub. L. 99-272, § 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, § 9411(a)(1), inserted "a hospital or" after "level of care provided in", and struck out provision added by Pub. L. 99-272, § 9502(b)(1).

Pub. L. 99-272, § 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, § 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, § 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, § 9502(c)(1), inserted "100 percent of" after "does not exceed".

Subsec. (c)(3). Pub. L. 99-509, § 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, § 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, § 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, § 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, § 9502(a), added par. (5).

Subsec. (c)(6). Pub. L. 99-272, § 9502(c)(2), added par. (6).

Subsec. (c)(7). Pub. L. 99-509, § 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, § 9502(d), added par. (7).

Subsec. (c)(8). Pub. L. 99-272, § 9502(h), added par. (8).

Subsec. (c)(9). Pub. L. 99-272, § 9502(i), added par. (9).

Subsec. (g). Pub. L. 99-272, § 9508(a)(1), added subsec. (g).

Subsec. (g)(1). Pub. L. 99-509, § 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".

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, see section 9320(i) of Pub. L. 99-509 set out as a note 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, § 9435(a), Oct. 21, 1986, 100 Stat. 2069, 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].

"(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 as a note 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, § 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 promulgatod by that date."

EXTENSIONS OF WAIVERS UNDER SUBSECTION (c)

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 [42 U.S.C. 1396n(c)] 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."

SECTION REFERRED TO IN OTHER SECTIONS

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

§ 1396o. Use of enrollment fees, premiums, deductions, cost sharing, and similar charges

(a) Imposition of certain charges under the plan in the case of individuals described in section 1396a(a)(10)(A) or (E)

The State plan shall provide that in the case of individuals described in subparagraph (A) or (E) 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;

(2) no deduction, cost sharing or similar charge will be imposed under the plan with respect to—

[*See main edition for text of (A) and (B)*]

(C) services furnished to any individual who is an inpatient in a hospital, skilled nursing facility, intermediate care facility, 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 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, or

(E) services furnished to an individual who is receiving hospice care (as defined in section 1396d(o) of this title); and

[*See main edition for text of (3)*]

(b) Imposition of certain charges under the plan in the 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 tbose described in subparagraph (A) or (E) of section 1396a(a)(10) of this title who are eligible under the plan—

[*See main edition for text of (1)*]

(2) no deduction, cost sharing, or similar charge will be imposed under the plan with respect to—

[*See main edition for text of (A) and (B)*]

(C) services furnished to any individual who is an inpatient in a hospital, skilled nursing facility, intermediate care facility, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, te 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 (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, or

(E) services furnished to an individual who is receiving hospice care (as defined in section 1396d(o) of this title); and

[*See main edition for text of (3); (c) and (d)*]

(As amended Apr. 7, 1986, Pub. L. 99-272, title IX, § 9505(c)(2), 100 Stat. 209; Oct. 21, 1986, Pub. L. 99-509, title IX, § 9403(g)(4)(B), 100 Stat. 2056.)

AMENDMENTS

1966—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).

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99-509 applicable te payments under this subchapter for calendar quarters bcginning on or after July 1, 1967, without regard te 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1396a of this title; title 8 section 1255a.

§ 1396q. Application of provisions of subchapter II relating to subpoenas

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.

(Aug. 14, 1935, ch. 531, title XIX, § 1918, as added July 18, 1984, Pub. L. 98-369, div. B, title III, § 2370(a), 98 Stat. 1110.)

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]."

§ 1396r. Correction and reduction plans for intermediate care facilities for mentally retarded

(a) Written plans to remedy suhstantial deficiencies; time for suhmission

If the Secretary finds that an intermediate care facility for the mentally retarded has substantial deficiencies which do not pose an immediato threat to the health and safety of residents, 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 defieiencies 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) te be vacatod and any staffing deficiencies to be corrected (hereinafter in this section referred to as a "reduction plan").

(h) 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 affectod 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 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 Stato, 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(c) of this title.

(2) In the case of a reduetion 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(c) 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 within three years after effective date of implementing regulations

The provisions of this section shall apply only to plans of correction and reduction plans approved by the Secretary within 3 years after the effective date of final regulations implementing this section.

(Aug. 14, 1935, ch. 531, title XIX, § 1919, as added Apr. 7, 1986, Pub. L. 99-272, title IX, § 9516(a), 100 Stat. 213.)

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 te 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."

REPORT TO CONGRESS ON IMPLEMENTATION AND RESULTS OF THIS SECTION

Section 9516(c) of Pub. L. 99-272 provided that: "The Secretary of Health and Human Services shall submit a report to the Congress on the implementation snd results of section 1919 of the Social Security Act [42 U.S.C. 1396r]. Such report shall be submitted not later than 30 months after the effective date of final regulations promulgated to implement such section."

§ 1396r-1. Presumptive eligibility for pregnant women

(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,

(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

(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 of this title or section 254c of this title, or

(II) subchapter V of this chapter;

(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; or

(iii) participates in a State perinatal program.

(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 Stato plan within 14 calendar days after the date on 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 within 14 calendar days after the date on which the determination is made.

(d) Ambulatory prenatal care as medical assistance

Notwithstanding any other provision of this subchapter, ambulatery prenatal care that—

(1) is furnished to a pregnant woman—

(A) during a presumptive eligibility period,

(B) by a qualified provider; 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.

(Aug. 14, 1935, ch. 531, title XIX, § 1920, as added Oct. 21, 1986, Pub. L. 99-509, title IX, § 9407(b), 100 Stat. 2058.)

REFERENCES IN TEXT

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.

PRIOR PROVISIONS

A prior section 1920 of act Aug. 14, 1935 was renumbered section 1921, by Pub. L. 99-509, and is classified to section 1396s of this title.

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.

SECTION REFERRED TO IN OTHER SECTIONS

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

§ 1396s. References to laws directly affecting medicaid program

(a) Authority or requirements to cover additional individuals

For provisions of law which make additional individuals eligible for medical assistance under this subchapter, see the following:

(1) AFDC

(A) Section 602(a)(32) of this title (relating to individuals who are deemed recipients of aid but for whom a payment is not made).

[9]Section 602(a)(37) of this title (relating to individuals who lose AFDC eligibility due to increased earnings).

(C) Section 606(h) of this title (relating to individuals who lose AFDC eligibility due to increased collection of child or spousal support).

(D) Section 614(g) of this title (relating to certain individuals participating in work supplementation programs).

(2) SSI

(A) Section 1382h of this title (relating to benefits for individuals who perform substantial gainful activity despite severe medical impairment).

(B) [10] Section 1383c(b) of this title (relating to preservation of benefit status for disabled widows and widowers who lost SSI benefits because of 1983 changes in actuarial reduction formula).

(B) [10] Section 1383c of this title (relating to individuals who lose eligibility for SSI benefits due to entitlement to child's insurance benefits under section 402(d) of this title).

(3) Foster care and adoption assistance

Sections 672(h) and 673(b) of this title (relating to medical assistance for children in foster care and for adopted children).

(4) Refugee assistance

Section 1522(e)(5) of title 8 (relating to medical assistance for certain refugees).

(5) Miscellaneous

(A) Section 230 of Public Law 93-66 (relating to deeming eligible for medical assistance certain essential persons).

(B) Section 231 of Public Law 93-66 (relating to deeming eligible for medical assistance certain persons in medical institutions).

(C) Section 232 of Public Law 93-66 (relating to deeming eligible for medical assistance certain blind and disabled medically indigent persons).

(D) Section 13(c) of Public Law 93-233 (relating to deeming eligible for medical assistance certain individuals receiving mandatory State supplementary payments).

(E) Section 503 of Public Law 94-566 (relating to deeming eligible for medical assistance certain individuals who would be eligible for supplemental security income benefits but for cost-of-living increases in social security benefits).

(F) Section 310(b)(1) of Public Law 96-272 (relating to continuing medicaid eligibility for certain recipients of Veterans' Administration pensions).

(b) Additional State plan requirements

For other provisions of law that establish additional requirements for State plans to be approved under this subchapter, see the following:

(1) Section 1382g of this title (relating to requirement for operation of certain State supplementation programs).

(2) Section 212(a) of Public Law 93-66 (relating to requiring mandatory minimum State supplementation of SSI benefits program).

(Aug. 14, 1935, ch. 531, title XIX, § 1921, formerly § 1920, as added Apr. 7, 1986, Pub. L. 99-272, title IX, § 9526, 100 Stat. 218, renumbered § 1921, Oct. 21, 1986, Pub. L. 99-509, title IX, § 9407(b), 100 Stat. 2058, and amended Oct. 22, 1986, Pub. L. 99-514, title XVIII, § 1895(c)(5), 100 Stat. 2936; Nov. 10, 1986, Pub. L. 99-643, § 6(c), 100 Stat. 3578.)

REFERENCES IN TEXT

Sections 230, 231, and 232 of Public Law 93-66, referred to in subsec. (a)(5)(A) to (C), are sections 230, 231, and 232 of Pub. L. 93-66, title II, July 9, 1973, 87 Stat. 159, 160, as amended, which are set out as notes under section 1396a of this title.

Section 13(c) of Public Law 93-233, referred to in subsec. (a)(5)(D), is section 13(c) of Pub. L. 93-233, Dec. 31, 1973, 87 Stat. 965, which is set out as a note under section 1396a of this title.

Section 503 of Public Law 94-566, referred to in subsec. (a)(5)(E), is section 503 of Pub. L. 94-566, title V, Oct. 20, 1976, 90 Stat. 2685, which is set out as a noto under section 1396a of this title.

Section 310(b)(1) of Public Law 96-272, referred to in subsec. (a)(5)(F), is section 310(b)(1) of Pub. L. 96-272, title III, June 17, 1980, 94 Stat. 533, which is set out as a note under section 1398a of this title.

Section 212(a) of Public Law 93-66, referred to in subsec. (b)(2), is section 212(a) 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.

AMENDMENTS

1986—Subsec. (a)(1). Pub. L. 99-514, § 1895(c)(5)(A), redesignated subpars. (B) and (C) as (C) and (D), respectively, and inserted at beginning of subpar. (A) "Section 602(a)(32) of this title (relating to individuals who are deemed recipients of aid but for whom a payment is not made)."

Subsec. (a)(2). Pub. L. 99-643, which directed amendment of section 1920(a)(2) of the Social Security Act by designating existing provisions as subpar. (A) and adding subpar. (B) relating to section 1383c of this title as it relates to individuals who lose eligibility for SSI benefits due to entitlement to child's insurance benefits, was executed to this section, section 1921 of the Social Security Act, to reflect the probable intent of Congress and the redesignation of section 1920 of the Social Security Act as section 1921 by Pub. L. 99-509.

Pub. L. 99-514, § 1895(c)(5)(B), designated existing provisions as subpar. (A) and added subpar. (B) relating to section 1383c(b) of this title as it relates to preservation of benefit status for certain disabled widows and widowers.

Subsec. (a)(3). Pub. L. 99-514, § 1895(c)(5)(C), substituted "Sections 672(h) and 673(b) of this title" for "Section 673(b) of this title".

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99-643 effective July 1, 1987, except as otherwise provided, see section 10(b) of Pub. L. 99-643, set out as a note under section 1396a of this title.

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.

[9]So in original. Second sentence probably should be designated subpar. (B).

[10]So in original. There are two subpars. designated "(B)".

SUBCHAPTER XX—BLOCK GRANTS TO STATES FOR SOCIAL SERVICES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 300z-5, 602, 603, 622, 671, 672, 673, 1301, 1308, 1320a-7, 1320b-2, 1382l, 1766, 3013, 3020d, 3026, 3035b, 8623, 8624, 10901 of this title; title 8 section 1255a; title 25 section 1931; title 31 section 3303; title 40 App. section 202.

§ 1397a. Payments to States

(a) Amount; covered services

[*See main edition for text of (1)*]

(2) For purposes of paragraph (1)—

[*See main edition for text of (A)*]

(B) expenditures for such services may include expenditures for—

[*See main edition for text of (i) and (ii)*]

(iii) conferences or workshops, and training or retraining through grants to nonprofit organizations within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986 or to individuals with social services expertise, or through financial assistance to individuals participating in such conferences, workshops, and training or retraining (and this clause shall apply with respect to all persons involved in the delivery of such services).

(b) Funding requirements

The Secretary shall make payments in accordance with section 6503 of title 31 to each State from its allotment for use under this subchapter.

[*See main edition for text of (c) to (e)*]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(h)(1), 98 Stat. 1169; Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095.)

REFERENCES IN TEXT

Section 501 of the Internal Revenue Code of 1986, referred to in subsec. (a)(2)(B)(iii), is classified to section 501 of Title 26, Internal Revenue Code.

AMENDMENTS

1986—Subsec. (a)(2)(B)(iii). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1984—Subsec. (b). Pub. L. 98-369 substituted "section 6503 of title 31" for "section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 603, 1397b, 1397c, 8622 of this title.

§ 1397b. Allotments

[*See main edition for text of (a)*]

(b) Computation of amounts for each State other than jurisdictions of Puerto Rico, Guam, etc.

The allotment for any fiscal year for each State other than the jurisdictions of Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands shall be an amount which bears the same ratio to—

[*See main edition for text of (1) and (2)*]

as the population of that State bears to the population of all the States (other than Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands) as determined by the Secretary (on the basis of the most recent data available from the Department of Commerce) and promulgated prior to the first day of the third month of the preceding fiscal year.

(c) Appropriations

The amount specified for purposes of subsections (a) and (b) of this section shall be—

(1) $2,400,000,000 for the fiscal year 1982;

(2) $2,450,000,000 for the fiscal year 1983; and

(3) $2,700,000,000 for the fiscal year 1984 and each succeeding fiscal year.

(As amended Oct. 24, 1983, Pub. L. 98-135, title II, § 204, 97 Stat. 861; Oct. 22, 1986, Pub. L. 99-514, title XVIII, § 1883(e)(1), 100 Stat. 2919.)

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-514, § 1883(e)(1)(B), struck out "(subject to subsection (d) of this section)" after "promulgated".

Subsec. (d). Pub. L. 99-514, § 1883(e)(1)(A), struck out subsec. (d) which read as follows: "The determination and promulgation required by subsection (b) of this section with respect to the fiscal year 1982 shall be made as soon as possible after August 13, 1981."

1983—Subsec. (c)(3). Pub. L. 98-135 substituted "$2,700,000,000 for the fiscal year 1984 and each succeeding fiscal year." for "$2,500,000,000 for the fiscal year 1984;".

Subsec. (c)(4), (5). Pub. L. 98-135 struck out pars. (4) and (5) which had provided, respectively, for an amount of $2,600,000,000 for fiscal year 1985 and $2,700,000,000 for fiscal year 1986 and succeeding fiscal years.

APPROPRIATIONS

Pub. L. 98-473, title IV, § 401, Oct. 12, 1984, 98 Stat. 2195, provided that:

"(a)(1) Notwithstanding any provision of title XX of the Social Security Act [42 U.S.C. 1397 et seq.], the amount applicable under section 2003(c)(3) of such Act [42 U.S.C. 1397b(c)(3)] shall be $2,725,000,000 for fiscal year 1985. Of such amount, $25,000,000 shall be allotted and used in accordance with this section.

"(2) In addition to any other amounts appropriated under this resolution [Pub. L. 98-473] or any Act, there are hereby appropriated $25,000,000 for fiscal year 1985, for carrying out title XX of the Social Security Act, to be used in accordance with the provisions of this section.

"(3) Amounts appropriated under this section shall remain available until September 30, 1985, without regard to section 102 of this resolution.

"(4) Except as otherwise provided in this section, each State's allotment of the additional amounts authorized and appropriated under this section shall be the same proportion of $25,000,000 as such State's proportional allotment of other title XX funds for fiscal year 1985, as determined under section 2003 of the Social Security Act [42 U.S.C. 1397b].

"(b) The additional $25,000,000 made available to the States for fiscal year 1985 pursuant to subsection (a) shall—

"(1) be used only for the purpose of providing training and retraining (including training in the prevention of child abuse in child care settings) to providers of licensed or registered child care services, operators and staffs (including those receiving in-service training) of facilities where licensed or registered child care services are provided, State licensing and enforcement officials, and parents;

"(2) be expended only to supplement the level of any funds that would, in the absence of the additional funds appropriated under this section, be available from other sources (including any amounts available under title XX of the Social Security Act [42 U.S.C. 1307 et seq.] without regard to this section) for the purpose specified in paragraph (1), and shall in no case supplant such funds from other sources or reduce the level thereof; and

"(3) be separately accounted for in the reports and audits provided for in section 2006 of the Social Security Act [42 U.S.C. 1397e].

"(c)(1) In order to provide guidance and assistance to the States in utilizing funds allocated pursuant to title XX of the Social Security Act [42 U.S.C. 1397 et seq.], not later than 3 months after the date of enactment of this section [Oct. 12, 1984], the Secretary shall draft and distribute to the States for their consideration, a Model Child Care Standards Act containing—

"(A) minimum licensing or registration standards for day care centers, group homes, and family day care homes regarding matters including—

"(i) the training, development, supervision, and evaluation of staff;

"(ii) staff qualification requirements, by job classification;

"(iii) staff-child ratios;

"(iv) probation periods for new staff;

"(v) employment history checks for staff; and

"(vi) parent visitation; and

"(2)(A) Any State receiving an allotment under such title from the funds made available as a result of subsection (a) shall have in effect, not later than September 30, 1985—

"(i) procedures, established by State law or regulation, to provide for employment history and background checks; and

"(ii) provisions of State law, enacted in accordance with the provisions of Public Law 92-544 (86 Stat. 1115) [86 Stat. 1115, 28 U.S.C. 534 note] requiring nationwide criminal record checks

for all operators, staff or employees, or prospective operators, staff or employees of child care facilities (including any facility or program having primary custody of children for 20 hours or more per week), juvenile detention, correction or treatment facilities, with the objective of protecting the children involved and promoting such children's safety and welfare while receiving service through such facilities or programs.

"(B) In the case of any State not meeting the requirements of subparagraph (A) by September 30, 1985, such State's allotment for fiscal year 1986 or 1987 shall be reduced in the aggregate by an amount equal to one-half of the amount by which such State's allotment under such title was increased for fiscal year 1985 as a result of subsection (a).

"(d) The determination and promulgation required by section 2003(b) of the Social Security Act [42 U.S.C. 1397b(b)] with respect to the fiscal year 1985 (to take into account the preceding provisions of this section) shall be made as soon as possible after the date of the enactment of this Act [Oct. 12, 1984]."

§ 1397e. Administrative and fiscal accountability

[*See main edition for text of (a) and (b)*]

(c) Additional accounting requirements

For other provisions requiring States to account for Federal grants, see section 6503 of title 31.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2663(h)(2), 98 Stat. 1169.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369 substituted "section 6503 of title 31" for "section 202 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4212)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

§ 1397f. Repealed. Pub. L. 99-514, title XVIII, § 1883(e)(2), Oct. 22, 1986, 100 Stat. 2919

Section, act Aug. 14, 1935, ch. 531, title XX, § 2007, as added Aug. 13, 1981, Pub. L. 97-35, title XXIII, § 2352(a), 95 Stat. 871, related to child day care services.

CHAPTER 8—LOW-INCOME HOUSING

Sec.

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1404a, 1434, 1436a, 1436b, 1437j-1, 1439, 1471, 1485, 1490a, 1502, 1503, 1504, 1586, 1590, 1594c, 1766, 3013, 5153, 5515, 8003 of this title; title 12 sections 24, 1701q, 1701r-1, 1715z-1a, 1701z-3, 1701z-11, 1715l; title 20 sections 244, 633, 635, 645; title 25 section 640d-14.