

quirements, was renumbered section 1123A of act Aug. 14, 1935, by Pub. L. 104-193, title V, §504, Aug. 22, 1996, 110 Stat. 2278, and was transferred to section 1320a-2a of this title.

§ 1320a-2. Effect of failure to carry out State plan

In an action brought to enforce a provision of this chapter, such provision is not to be deemed unenforceable because of its inclusion in a section of this chapter requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in *Suter v. Artist M.*, 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability; provided, however, that this section is not intended to alter the holding in *Suter v. Artist M.* that section 671(a)(15) of this title is not enforceable in a private right of action.

(Aug. 14, 1935, ch. 531, title XI, §1123, as added Pub. L. 103-382, title V, §555(a), Oct. 20, 1994, 108 Stat. 4057.)

PRIOR PROVISIONS

A prior section 1320a-2, act Aug. 14, 1935, ch. 531, title XI, §1123, as added Oct. 30, 1972, Pub. L. 92-603, title II, §241, 86 Stat. 1418; amended Dec. 5, 1980, Pub. L. 96-499, title IX, §911, 94 Stat. 2619; Sept. 3, 1982, Pub. L. 97-248, title I, §126, 96 Stat. 366; Apr. 7, 1986, Pub. L. 99-272, title IX, §9303(b)(4), 100 Stat. 189, related to qualifications for health care personnel, prior to repeal by Pub. L. 100-360, title IV, §430(a), as added Pub. L. 100-485, title VI, §608(b), (g)(1), Oct. 13, 1988, 102 Stat. 2412, 2424, effective as if included in the enactment of Pub. L. 100-360.

Another section 1123 of act Aug. 14, 1935, was renumbered section 1123A, and is classified to section 1320a-2a of this title.

EFFECTIVE DATE

Pub. L. 103-382, title V, §555(b), Oct. 20, 1994, 108 Stat. 4058, provided that: "The amendment made by subsection (a) [enacting this section] shall apply to actions pending on the date of the enactment of this Act [Oct. 20, 1994] and to actions brought on or after such date of enactment."

§ 1320a-2a. Reviews of child and family services programs, and of foster care and adoption assistance programs, for conformity with State plan requirements

(a) In general

The Secretary, in consultation with the State agencies administering the State programs under parts B and E of subchapter IV of this chapter, shall promulgate regulations for the review of such programs to determine whether such programs are in substantial conformity with—

- (1) State plan requirements under such parts B and E,
- (2) implementing regulations promulgated by the Secretary, and
- (3) the relevant approved State plans.

(b) Elements of review system

The regulations referred to in subsection (a) of this section shall—

- (1) specify the timetable for conformity reviews of State programs, including—

(A) an initial review of each State program;

(B) a timely review of a State program following a review in which such program was found not to be in substantial conformity; and

(C) less frequent reviews of State programs which have been found to be in substantial conformity, but such regulations shall permit the Secretary to reinstate more frequent reviews based on information which indicates that a State program may not be in conformity;

(2) specify the requirements subject to review (which shall include determining whether the State program is in conformity with the requirement of section 671(a)(27) of this title), and the criteria to be used to measure conformity with such requirements and to determine whether there is a substantial failure to so conform;

(3) specify the method to be used to determine the amount of any Federal matching funds to be withheld (subject to paragraph (4)) due to the State program's failure to so conform, which ensures that—

(A) such funds will not be withheld with respect to a program, unless it is determined that the program fails substantially to so conform;

(B) such funds will not be withheld for a failure to so conform resulting from the State's reliance upon and correct use of formal written statements of Federal law or policy provided to the State by the Secretary; and

(C) the amount of such funds withheld is related to the extent of the failure to so conform; and

(4) require the Secretary, with respect to any State program found to have failed substantially to so conform—

(A) to afford the State an opportunity to adopt and implement a corrective action plan, approved by the Secretary, designed to end the failure to so conform;

(B) to make technical assistance available to the State to the extent feasible to enable the State to develop and implement such a corrective action plan;

(C) to suspend the withholding of any Federal matching funds under this section while such a corrective action plan is in effect; and

(D) to rescind any such withholding if the failure to so conform is ended by successful completion of such a corrective action plan.

(c) Provisions for administrative and judicial review

The regulations referred to in subsection (a) of this section shall—

(1) require the Secretary, not later than 10 days after a final determination that a program of the State is not in conformity, to notify the State of—

(A) the basis for the determination; and

(B) the amount of the Federal matching funds (if any) to be withheld from the State;

(2) afford the State an opportunity to appeal the determination to the Departmental Ap-

peals Board within 60 days after receipt of the notice described in paragraph (1) (or, if later, after failure to continue or to complete a corrective action plan); and

(3) afford the State an opportunity to obtain judicial review of an adverse decision of the Board, within 60 days after the State receives notice of the decision of the Board, by appeal to the district court of the United States for the judicial district in which the principal or headquarters office of the agency responsible for administering the program is located.

(Aug. 14, 1935, ch. 531, title XI, §1123A, formerly §1123, as added Pub. L. 103-432, title II, §203(a), Oct. 31, 1994, 108 Stat. 4454; renumbered §1123A, Pub. L. 104-193, title V, §504, Aug. 22, 1996, 110 Stat. 2278; amended Pub. L. 109-432, div. B, title IV, §405(c)(1)(B)(ii), Dec. 20, 2006, 120 Stat. 2999.)

CODIFICATION

Section was formerly classified to section 1320a-1a of this title prior to renumbering by Pub. L. 104-193.

AMENDMENTS

2006—Subsec. (b)(2). Pub. L. 109-432 inserted “(which shall include determining whether the State program is in conformity with the requirement of section 671(a)(27) of this title)” after “review”.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-432 effective on the date that is 6 months after Dec. 20, 2006, see section 405(c)(1)(B)(iii) of Pub. L. 109-432, set out as a note under section 671 of this title.

EFFECTIVE DATE

Pub. L. 103-432, title II, §203(c)(1), Oct. 31, 1994, 108 Stat. 4456, provided that: “The amendment made by subsection (a) [enacting this section] shall take effect on the date of the enactment of this Act [Oct. 31, 1994].”

REGULATIONS

Pub. L. 103-432, title II, §203(c)(3), Oct. 31, 1994, 108 Stat. 4456, provided that: “The Secretary shall promulgate the regulations referred to in section 1123(a) [now 1123A(a)] of the Social Security Act [subsec. (a) of this section] (as added by this section) not later than July 1, 1995, to take effect on April 1, 1996.”

§ 1320a-3. Disclosure of ownership and related information; procedure; definitions; scope of requirements

(a) In general

(1) The Secretary shall by regulation or by contract provision provide that each disclosing entity (as defined in paragraph (2)) shall—

(A) as a condition of the disclosing entity’s participation in, or certification or recertification under, any of the programs established by subchapters V, XVIII, and XIX of this chapter, or

(B) as a condition for the approval or renewal of a contract or agreement between the disclosing entity and the Secretary or the appropriate State agency under any of the programs established under subchapters V, XVIII, and XIX of this chapter,

supply the Secretary or the appropriate State agency with full and complete information as to the identity of each person with an ownership or control interest (as defined in paragraph (3)) in the entity or in any subcontractor (as defined by

the Secretary in regulations) in which the entity directly or indirectly has a 5 per centum or more ownership interest and supply the Secretary with the¹ both the employer identification number (assigned pursuant to section 6109 of the Internal Revenue Code of 1986) and social security account number (assigned under section 405(c)(2)(B) of this title) of the disclosing entity, each person with an ownership or control interest (as defined in subsection (a)(3) of this section), and any subcontractor in which the entity directly or indirectly has a 5 percent or more ownership interest.

(2) As used in this section, the term “disclosing entity” means an entity which is—

(A) a provider of services (as defined in section 1395x(u) of this title, other than a fund), an independent clinical laboratory, a renal disease facility, a managed care entity, as defined in section 1396u-2(a)(1)(B) of this title, or a health maintenance organization (as defined in section 300e(a) of this title);

(B) an entity (other than an individual practitioner or group of practitioners) that furnishes, or arranges for the furnishing of, items or services with respect to which payment may be claimed by the entity under any plan or program established pursuant to subchapter V of this chapter or under a State plan approved under subchapter XIX of this chapter; or

(C) a carrier or other agency or organization that is acting as a fiscal intermediary or agent with respect to one or more providers of services (for purposes of part A or part B of subchapter XVIII of this chapter, or both, or for purposes of a State plan approved under subchapter XIX of this chapter) pursuant to (i) an agreement under section 1395h of this title, (ii) a contract under section 1395u of this title, or (iii) an agreement with a single State agency administering or supervising the administration of a State plan approved under subchapter XIX of this chapter.

(3) As used in this section, the term “person with an ownership or control interest” means, with respect to an entity, a person who—

(A)(i) has directly or indirectly (as determined by the Secretary in regulations) an ownership interest of 5 per centum or more in the entity; or

(ii) is the owner of a whole or part interest in any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by the entity or any of the property or assets thereof, which whole or part interest is equal to or exceeds 5 per centum of the total property and assets of the entity; or

(B) is an officer or director of the entity, if the entity is organized as a corporation; or

(C) is a partner in the entity, if the entity is organized as a partnership.

(b) Other disclosing entities

To the extent determined to be feasible under regulations of the Secretary, a disclosing entity shall also include in the information supplied under subsection (a)(1) of this section, with respect to each person with an ownership or con-

¹ So in original. The word “the” probably should not appear.