

demic influenza), the duration of a waiver or modification under paragraph (3) shall be determined in accordance with subsection (e) as such subsection applies to public health emergencies.”

Subsec. (b)(3)(B). Pub. L. 109-417, §302(b)(1)(A), added subpar. (B) and struck out former subpar. (B) which read as follows: “the direction or relocation of an individual to receive medical screening in an alternate location pursuant to an appropriate State emergency preparedness plan;”

2004—Subsec. (b). Pub. L. 108-276, §9(5), inserted at end of concluding provisions: “A waiver or modification provided for under paragraph (3) or (7) shall only be in effect if such actions are taken in a manner that does not discriminate among individuals on the basis of their source of payment or of their ability to pay, and shall be limited to a 72-hour period beginning upon implementation of a hospital disaster protocol. A waiver or modification under such paragraph (7) shall be withdrawn after such period and the provider shall comply with the requirements under such paragraph for any patient still under the care of the provider.”

Subsec. (b)(3). Pub. L. 108-276, §9(1), added par. (3) and struck out former par. (3) which read as follows: “sanctions under section 1395dd of this title (relating to examination and treatment for emergency medical conditions and women in labor) for a transfer of an individual who has not been stabilized in violation of subsection (c) of this section of such section if the transfer arises out of the circumstances of the emergency;”

Subsec. (b)(7). Pub. L. 108-276, §9(2)-(4), added par. (7).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108-173, set out as a note under section 1395w-21 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-417, title III, §302(b)(2), Dec. 19, 2006, 120 Stat. 2856, provided that: “The amendments made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 19, 2006] and shall apply to public health emergencies declared pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247d) on or after such date.”

EFFECTIVE DATE

Pub. L. 107-188, title I, §143(b), June 12, 2002, 116 Stat. 629, provided that: “The amendment made by subsection (a) [enacting this section] shall be effective on and after September 11, 2001.”

§ 1320b-6. Exclusion of representatives and health care providers convicted of violations from participation in social security programs

(a) In general

The Commissioner of Social Security shall exclude from participation in the social security programs any representative or health care provider—

- (1) who is convicted of a violation of section 408 or 1383a of this title;
- (2) who is convicted of any violation under title 18 relating to an initial application for or continuing entitlement to, or amount of, benefits under subchapter II of this chapter, or an initial application for or continuing eligibility for, or amount of, benefits under subchapter XVI of this chapter; or
- (3) who the Commissioner determines has committed an offense described in section 1320a-8(a)(1) of this title.

(b) Notice, effective date, and period of exclusion

(1) An exclusion under this section shall be effective at such time, for such period, and upon such reasonable notice to the public and to the individual excluded as may be specified in regulations consistent with paragraph (2).

(2) Such an exclusion shall be effective with respect to services furnished to any individual on or after the effective date of the exclusion. Nothing in this section may be construed to preclude, in determining disability under subchapter II of this chapter or subchapter XVI of this chapter, consideration of any medical evidence derived from services provided by a health care provider before the effective date of the exclusion of the health care provider under this section.

(3)(A) The Commissioner shall specify, in the notice of exclusion under paragraph (1), the period of the exclusion.

(B) Subject to subparagraph (C), in the case of an exclusion under subsection (a) of this section, the minimum period of exclusion shall be 5 years, except that the Commissioner may waive the exclusion in the case of an individual who is the sole source of essential services in a community. The Commissioner’s decision whether to waive the exclusion shall not be reviewable.

(C) In the case of an exclusion of an individual under subsection (a) of this section based on a conviction or a determination described in subsection (a)(3) of this section occurring on or after December 14, 1999, if the individual has (before, on, or after December 14, 1999) been convicted, or if such a determination has been made with respect to the individual—

- (i) on one previous occasion of one or more offenses for which an exclusion may be effected under such subsection, the period of the exclusion shall be not less than 10 years; or
- (ii) on two or more previous occasions of one or more offenses for which an exclusion may be effected under such subsection, the period of the exclusion shall be permanent.

(c) Notice to State agencies

The Commissioner shall promptly notify each appropriate State agency employed for the purpose of making disability determinations under section 421 or 1383b(a) of this title—

- (1) of the fact and circumstances of each exclusion effected against an individual under this section; and
- (2) of the period (described in subsection (b)(3) of this section) for which the State agency is directed to exclude the individual from participation in the activities of the State agency in the course of its employment.

(d) Notice to State licensing agencies

The Commissioner shall—

- (1) promptly notify the appropriate State or local agency or authority having responsibility for the licensing or certification of an individual excluded from participation under this section of the fact and circumstances of the exclusion;
- (2) request that appropriate investigations be made and sanctions invoked in accordance with applicable State law and policy; and
- (3) request that the State or local agency or authority keep the Commissioner and the In-

spector General of the Social Security Administration fully and currently informed with respect to any actions taken in response to the request.

(e) Notice, hearing, and judicial review

(1) Any individual who is excluded (or directed to be excluded) from participation under this section is entitled to reasonable notice and opportunity for a hearing thereon by the Commissioner to the same extent as is provided in section 405(b) of this title, and to judicial review of the Commissioner's final decision after such hearing as is provided in section 405(g) of this title.

(2) The provisions of section 405(h) of this title shall apply with respect to this section to the same extent as it is applicable with respect to subchapter II of this chapter.

(f) Application for termination of exclusion

(1) An individual excluded from participation under this section may apply to the Commissioner, in the manner specified by the Commissioner in regulations and at the end of the minimum period of exclusion provided under subsection (b)(3) of this section and at such other times as the Commissioner may provide, for termination of the exclusion effected under this section.

(2) The Commissioner may terminate the exclusion if the Commissioner determines, on the basis of the conduct of the applicant which occurred after the date of the notice of exclusion or which was unknown to the Commissioner at the time of the exclusion, that—

(A) there is no basis under subsection (a) of this section for a continuation of the exclusion; and

(B) there are reasonable assurances that the types of actions which formed the basis for the original exclusion have not recurred and will not recur.

(3) The Commissioner shall promptly notify each State agency employed for the purpose of making disability determinations under section 421 or 1383b(a) of this title of the fact and circumstances of each termination of exclusion made under this subsection.

(g) Availability of records of excluded representatives and health care providers

Nothing in this section shall be construed to have the effect of limiting access by any applicant or beneficiary under subchapter II or XVI of this chapter, any State agency acting under section 421 or 1383b(a) of this title, or the Commissioner to records maintained by any representative or health care provider in connection with services provided to the applicant or beneficiary prior to the exclusion of such representative or health care provider under this section.

(h) Reporting requirement

Any representative or health care provider participating in, or seeking to participate in, a social security program shall inform the Commissioner, in such form and manner as the Commissioner shall prescribe by regulation, whether such representative or health care provider has been convicted of a violation described in subsection (a) of this section.

(i) Delegation of authority

The Commissioner may delegate authority granted by this section to the Inspector General.

(j) Definitions

For purposes of this section:

(1) Exclude

The term “exclude” from participation means—

(A) in connection with a representative, to prohibit from engaging in representation of an applicant for, or recipient of, benefits, as a representative payee under section 405(j) or section 1383(a)(2)(A)(ii) of this title, or otherwise as a representative, in any hearing or other proceeding relating to entitlement to benefits; and

(B) in connection with a health care provider, to prohibit from providing items or services to an applicant for, or recipient of, benefits for the purpose of assisting such applicant or recipient in demonstrating disability.

(2) Social security program

The term “social security programs” means the program providing for monthly insurance benefits under subchapter II of this chapter, and the program providing for monthly supplemental security income benefits to individuals under subchapter XVI of this chapter (including State supplementary payments made by the Commissioner pursuant to an agreement under section 1382e(a) of this title or section 212(b) of Public Law 93-66).

(3) Convicted

An individual is considered to have been “convicted” of a violation—

(A) when a judgment of conviction has been entered against the individual by a Federal, State, or local court, except if the judgment of conviction has been set aside or expunged;

(B) when there has been a finding of guilt against the individual by a Federal, State, or local court;

(C) when a plea of guilty or nolo contendere by the individual has been accepted by a Federal, State, or local court; or

(D) when the individual has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld.

(Aug. 14, 1935, ch. 531, title XI, §1136, as added Pub. L. 106-169, title II, §208(a), Dec. 14, 1999, 113 Stat. 1839.)

REFERENCES IN TEXT

Section 212(b) of Public Law 93-66, referred to in subsec. (j)(2), is section 212(b) 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.

PRIOR PROVISIONS

A prior section 1320b-6, act Aug. 14, 1935, ch. 531, title XI, §1136, as added Pub. L. 98-369, div. B, title VI, §2630, July 18, 1984, 98 Stat. 1137; amended Pub. L. 99-514, title XVIII, §1883(c)(2), Oct. 22, 1986, 100 Stat. 2918, related to pilot projects to demonstrate use of integrated service delivery systems for human services programs, prior to

repeal by Pub. L. 104-193, title I, §§ 108(q)(7), 116, Aug. 22, 1996, 110 Stat. 2168, 2181, effective July 1, 1997, with certain transition rules.

EFFECTIVE DATE

Pub. L. 106-169, title II, § 208(b), Dec. 14, 1999, 113 Stat. 1842, provided that: "The amendment made by this section [enacting this section] shall apply with respect to convictions of violations described in paragraphs (1) and (2) of section 1136(a) of the Social Security Act [subsec. (a) of this section] and determinations described in paragraph (3) of such section occurring on or after the date of the enactment of this Act [Dec. 14, 1999]."

§ 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 supplemental nutrition assistance program, by the Secretary of Agriculture);

(3) employers (as defined in section 653a(a)(2)(B) of this title) (including State and local governmental entities and labor organizations) 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), and except that no report shall

be filed with respect to an employee of a State or local agency performing intelligence or counterintelligence functions, if the head of such agency has determined that filing such a report could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission, and except that in the case of wage reports with respect to domestic service employment, a State may permit employers (as so defined) that make returns with respect to such employment on a calendar year basis pursuant to section 3510 of the Internal Revenue Code of 1986 to make such reports on an annual basis;

(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 to 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 the 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 to 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 supplemental nutrition assistance program, the Secretary of Agriculture, or¹ in the case of information released pursuant to section 6103(l) of the Internal Revenue Code of 1986, the Secretary of the Treasury;

¹ So in original. Probably should be followed by a comma.