

## EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-275 effective Jan. 1, 2010, see section 113(c) of Pub. L. 110-275, set out as a note under section 1320b-14 of this title.

## EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-91 applicable to drugs dispensed on or after Jan. 1, 2006, see section 104(d) of Pub. L. 109-91, set out as a note under section 1396b of this title.

**§ 1396u-6. Medicaid Integrity Program****(a) In general**

There is hereby established the Medicaid Integrity Program (in this section referred to as the “Program”) under which the Secretary shall promote the integrity of the program under this subchapter by entering into contracts in accordance with this section with eligible entities to carry out the activities described in subsection (b).

**(b) Activities described**

Activities described in this subsection are as follows:

(1) Review of the actions of individuals or entities furnishing items or services (whether on a fee-for-service, risk, or other basis) for which payment may be made under a State plan approved under this subchapter (or under any waiver of such plan approved under section 1315 of this title) to determine whether fraud, waste, or abuse has occurred, is likely to occur, or whether such actions have any potential for resulting in an expenditure of funds under this subchapter in a manner which is not intended under the provisions of this subchapter.

(2) Audit of claims for payment for items or services furnished, or administrative services rendered, under a State plan under this subchapter, including—

- (A) cost reports;
- (B) consulting contracts; and
- (C) risk contracts under section 1396b(m) of this title.

(3) Identification of overpayments to individuals or entities receiving Federal funds under this subchapter.

(4) Education or training, including at such national, State, or regional conferences as the Secretary may establish, of State or local officers, employees, or independent contractors responsible for the administration or the supervision of the administration of the State plan under this subchapter, providers of services, managed care entities, beneficiaries, and other individuals with respect to payment integrity and quality of care.

**(c) Eligible entity and contracting requirements****(1) In general**

An entity is eligible to enter into a contract under the Program to carry out any of the activities described in subsection (b) if the entity satisfies the requirements of paragraphs (2) and (3).

**(2) Eligibility requirements**

The requirements of this paragraph are the following:

(A) The entity has demonstrated capability to carry out the activities described in subsection (b).

(B) In carrying out such activities, the entity agrees to cooperate with the Inspector General of the Department of Health and Human Services, the Attorney General, and other law enforcement agencies, as appropriate, in the investigation and deterrence of fraud and abuse in relation to this subchapter and in other cases arising out of such activities.

(C) The entity complies with such conflict of interest standards as are generally applicable to Federal acquisition and procurement.

(D) The entity agrees to provide the Secretary and the Inspector General of the Department of Health and Human Services with such performance statistics (including the number and amount of overpayments recovered, the number of fraud referrals, and the return on investment of such activities by the entity) as the Secretary or the Inspector General may request.

(E) The entity meets such other requirements as the Secretary may impose.

**(3) Contracting requirements**

The entity has contracted with the Secretary in accordance with such procedures as the Secretary shall by regulation establish, except that such procedures shall include the following:

(A) Procedures for identifying, evaluating, and resolving organizational conflicts of interest that are generally applicable to Federal acquisition and procurement.

(B) Competitive procedures to be used—

(i) when entering into new contracts under this section;

(ii) when entering into contracts that may result in the elimination of responsibilities under section 202(b) of the Health Insurance Portability and Accountability Act of 1996; and

(iii) at any other time considered appropriate by the Secretary.

(C) Procedures under which a contract under this section may be renewed without regard to any provision of law requiring competition if the contractor has met or exceeded the performance requirements established in the current contract.

The Secretary may enter into such contracts without regard to final rules having been promulgated.

**(4) Limitation on contractor liability**

The Secretary shall by regulation provide for the limitation of a contractor’s liability for actions taken to carry out a contract under the Program, and such regulation shall, to the extent the Secretary finds appropriate, employ the same or comparable standards and other substantive and procedural provisions as are contained in section 1320c-6 of this title.

**(d) Comprehensive plan for program integrity****(1) 5-year plan**

With respect to the 5-fiscal year period beginning with fiscal year 2006, and each such 5-

fiscal year period that begins thereafter, the Secretary shall establish a comprehensive plan for ensuring the integrity of the program established under this subchapter by combating fraud, waste, and abuse.

**(2) Consultation**

Each 5-fiscal year plan established under paragraph (1) shall be developed by the Secretary in consultation with the Attorney General, the Director of the Federal Bureau of Investigation, the Comptroller General of the United States, the Inspector General of the Department of Health and Human Services, and State officials with responsibility for controlling provider fraud and abuse under State plans under this subchapter.

**(e) Appropriation**

**(1) In general**

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to carry out the Medicaid Integrity Program under this section, without further appropriation—

(A) for fiscal year 2006, \$5,000,000;

(B) for each of fiscal years 2007 and 2008, \$50,000,000;

(C) for each of fiscal years 2009 and 2010, \$75,000,000; and

(D) for each fiscal year after fiscal year 2010, the amount appropriated under this paragraph for the previous fiscal year, increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) over the previous year.

**(2) Availability; authority for use of funds**

**(A) Availability**

Amounts appropriated pursuant to paragraph (1) shall remain available until expended.

**(B) Authority for use of funds for transportation and travel expenses for attendees at education, training, or consultative activities**

**(i) In general**

The Secretary may use amounts appropriated pursuant to paragraph (1) to pay for transportation and the travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 while away from their homes or regular places of business, of individuals described in subsection (b)(4) who attend education, training, or consultative activities conducted under the authority of that subsection.

**(ii) Public disclosure**

The Secretary shall make available on a website of the Centers for Medicare & Medicaid Services that is accessible to the public—

(I) the total amount of funds expended for each conference conducted under the authority of subsection (b)(4); and

(II) the amount of funds expended for each such conference that were for transportation and for travel expenses.

**(3) Increase in cms staffing devoted to protecting Medicaid program integrity**

From the amounts appropriated under paragraph (1), the Secretary shall increase by 100 the number of full-time equivalent employees whose duties consist solely of protecting the integrity of the Medicaid program established under this section by providing effective support and assistance to States to combat provider fraud and abuse.

**(4) Evaluations**

The Secretary shall conduct evaluations of eligible entities which the Secretary contracts with under the Program not less frequently than every 3 years.

**(5) Annual report**

Not later than 180 days after the end of each fiscal year (beginning with fiscal year 2006), the Secretary shall submit a report to Congress which identifies—

(A) the use of funds appropriated pursuant to paragraph (1); and

(B) the effectiveness of the use of such funds.

(Aug. 14, 1935, ch. 531, title XIX, § 1936, as added Pub. L. 109-171, title VI, § 6034(a)(2), Feb. 8, 2006, 120 Stat. 74; amended Pub. L. 110-379, § 5(a)(1), (b)(1), Oct. 8, 2008, 122 Stat. 4078; Pub. L. 111-148, title VI, § 6402(j)(2), Mar. 23, 2010, 124 Stat. 762; Pub. L. 111-152, title I, § 1303(b), Mar. 30, 2010, 124 Stat. 1058.)

REFERENCES IN TEXT

Section 202(b) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (c)(3)(B)(ii), is section 202(b) of title II of Pub. L. 104-191, Aug. 21, 1996, 110 Stat. 1998, which amended sections 1395h and 1395u of this title.

PRIOR PROVISIONS

A prior section 1936 of act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1396v of this title.

AMENDMENTS

2010—Subsec. (c)(2)(D), (E). Pub. L. 111-148, § 6402(j)(2)(A), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (e)(1)(C). Pub. L. 111-152, § 1303(b)(2)(A), substituted “for each of fiscal years 2009 and 2010” for “for each fiscal year thereafter”.

Subsec. (e)(1)(D). Pub. L. 111-152, § 1303(b)(1), (2)(B), (3), added subpar. (D).

Subsec. (e)(4), (5). Pub. L. 111-148, § 6402(j)(2)(B), added par. (4) and redesignated former par. (4) as (5).

2008—Subsec. (b)(4). Pub. L. 110-379, § 5(a)(1)(A), substituted “Education or training, including at such national, State, or regional conferences as the Secretary may establish, of State or local officers, employees, or independent contractors responsible for the administration or the supervision of the administration of the State plan under this subchapter,” for “Education of”.

Subsec. (e)(2). Pub. L. 110-379, § 5(a)(1)(B), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: “Amounts appropriated pursuant to paragraph (1) shall remain available until expended.”

Subsec. (e)(2)(B)(ii). Pub. L. 110-379, § 5(b)(1), added cl. (ii).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-379, § 5(a)(2), Oct. 8, 2008, 122 Stat. 4078, provided that: “The amendments made by paragraph (1)

[amending this section] shall take effect as if included in the enactment of section 1936 of the Social Security Act [42 U.S.C. 1396u-6], as added by section 6034(a) of the Deficit Reduction Act of 2005 (Public Law 109-171).”

Pub. L. 110-379, §5(b)(2), Oct. 8, 2008, 122 Stat. 4079, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to conferences conducted under the authority of section 1936(b)(4) of the Social Security Act (42 U.S.C. 1396u-6(b)(4)) after the date of enactment of this Act [Oct. 8, 2008].”

### § 1396u-7. State flexibility in benefit packages

#### (a) State option of providing benchmark benefits

##### (1) Authority

###### (A) In general

Notwithstanding section 1396a(a)(1) of this title (relating to statewideness), section 1396a(a)(10)(B) of this title (relating to comparability) and any other provision of this subchapter which would be directly contrary to the authority under this section and subject to subsection<sup>1</sup> (E), a State, at its option as a State plan amendment, may provide for medical assistance under this subchapter to individuals within one or more groups of individuals specified by the State through coverage that—

(i) provides benchmark coverage described in subsection (b)(1) or benchmark equivalent coverage described in subsection (b)(2); and

(ii) for any individual described in section 1396d(a)(4)(B) of this title who is eligible under the State plan in accordance with paragraphs (10) and (17) of section 1396a(a) of this title, consists of the items and services described in section 1396d(a)(4)(B) of this title (relating to early and periodic screening, diagnostic, and treatment services defined in section 1396d(r) of this title) and provided in accordance with the requirements of section 1396a(a)(43) of this title.

###### (B) Limitation

The State may only exercise the option under subparagraph (A) for an individual eligible under subclause (VIII) of section 1396a(a)(10)(A)(i) of this title or under an eligibility category that had been established under the State plan on or before February 8, 2006.

###### (C) Option of additional benefits

In the case of coverage described in subparagraph (A), a State, at its option, may provide such additional benefits as the State may specify.

###### (D) Treatment as medical assistance

Payment of premiums for such coverage under this subsection shall be treated as payment of other insurance premiums described in the third sentence of section 1396d(a) of this title.

###### (E) Rule of construction

Nothing in this paragraph shall be construed as—

(i) requiring a State to offer all or any of the items and services required by sub-

paragraph (A)(ii) through an issuer of benchmark coverage described in subsection (b)(1) or benchmark equivalent coverage described in subsection (b)(2);

(ii) preventing a State from offering all or any of the items and services required by subparagraph (A)(ii) through an issuer of benchmark coverage described in subsection (b)(1) or benchmark equivalent coverage described in subsection (b)(2); or

(iii) affecting a child's entitlement to care and services described in subsections (a)(4)(B) and (r) of section 1396d of this title and provided in accordance with section 1396a(a)(43) of this title whether provided through benchmark coverage, benchmark equivalent coverage, or otherwise.

#### (2) Application

##### (A) In general

Except as provided in subparagraph (B), a State may require that a full-benefit eligible individual (as defined in subparagraph (C)) within a group obtain benefits under this subchapter through enrollment in coverage described in paragraph (1)(A). A State may apply the previous sentence to individuals within 1 or more groups of such individuals.

##### (B) Limitation on application

A State may not require under subparagraph (A) an individual to obtain benefits through enrollment described in paragraph (1)(A) if the individual is within one of the following categories of individuals:

###### (i) Mandatory pregnant women

The individual is a pregnant woman who is required to be covered under the State plan under section 1396a(a)(10)(A)(i) of this title.

###### (ii) Blind or disabled individuals

The individual qualifies for medical assistance under the State plan on the basis of being blind or disabled (or being treated as being blind or disabled) without regard to whether the individual is eligible for supplemental security income benefits under subchapter XVI on the basis of being blind or disabled and including an individual who is eligible for medical assistance on the basis of section 1396a(e)(3) of this title.

###### (iii) Dual eligibles

The individual is entitled to benefits under any part of subchapter XVIII.

###### (iv) Terminally ill hospice patients

The individual is terminally ill and is receiving benefits for hospice care under this subchapter.

###### (v) Eligible on basis of institutionalization

The individual is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, and 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 the individual's income required for personal needs.

<sup>1</sup> So in original. Probably should be “subparagraph”.