

an individual who filed an application for monthly insurance benefits under section 202 of such Act [42 U.S.C. 402] prior to the effective date of the amendment made by subsection (a) [see section 2(c) of Pub. L. 96-473, set out above as an Effective Date of 1980 Amendment note] shall be deemed to have filed an application for hospital insurance benefits under part A of title XVIII of such Act [42 U.S.C. 1395c et seq.] at the time he applied for such benefits under section 202 regardless of the continuing status or effect of the application for benefits under section 202, if he would have been entitled to benefits under that section had such application remained in effect."

#### GAO REPORT

Pub. L. 106-170, title II, §202(c), Dec. 17, 1999, 113 Stat. 1894, provided that: "Not later than 5 years after the date of the enactment of this Act [Dec. 17, 1999], the Comptroller General of the United States shall submit a report to the Congress that—

"(1) examines the effectiveness and cost of the amendment made by subsection (a) [amending this section];

"(2) examines the necessity and effectiveness of providing continuation of medicare coverage under section 226(b) of the Social Security Act (42 U.S.C. 426(b)) to individuals whose annual income exceeds the contribution and benefit base (as determined under section 230 of such Act (42 U.S.C. 430));

"(3) examines the viability of providing the continuation of medicare coverage under such section 226(b) based on a sliding scale premium for individuals whose annual income exceeds such contribution and benefit base;

"(4) examines the viability of providing the continuation of medicare coverage under such section 226(b) based on a premium buy-in by the beneficiary's employer in lieu of coverage under private health insurance;

"(5) examines the interrelation between the use of the continuation of medicare coverage under such section 226(b) and the use of private health insurance coverage by individuals during the extended period; and

"(6) recommends such legislative or administrative changes relating to the continuation of medicare coverage for recipients of social security disability benefits as the Comptroller General determines are appropriate."

#### TIME IN WHICH TO FURNISH PROOF OF DISABILITY FOR HOSPITAL BENEFITS

Pub. L. 98-21, title III, §309(q)(2), Apr. 20, 1983, 97 Stat. 117, provided that: "For purposes of determining entitlement to hospital insurance benefits under section 226(e)(3) of such Act [42 U.S.C. 426(e)(3)], 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."

#### SPECIAL \$50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of \$50 as soon as practicable after Mar. 29, 1975, by the Secretary of the Treasury to each individual who, for the month of March 1975, was entitled to a monthly insurance benefit payable under this subchapter, see section 702 of Pub. L. 94-12, set out as a note under section 402 of this title.

#### ADOPTED CHILD'S REENLISTMENT TO ANNUITY

Pub. L. 93-58, §4(b), July 6, 1973, 87 Stat. 142, provided that: "Any child (1) whose entitlement to an annuity

under section 5(c) of the Railroad Retirement Act [of 1937] [former 45 U.S.C. 228e(c)] was terminated by reason of his adoption prior to the enactment of this Act [July 6, 1973], and (2) who, except for such adoption, would be entitled to an annuity under such section for a month after the month in which this Act is enacted [July 1973], may, upon filing application for an annuity under the Railroad Retirement Act [former 45 U.S.C. 228e et seq.] after the date of enactment of this Act [July 6, 1973], become reentitled to such annuity; except that no child shall, by reason of the enactment of this Act [amending this section and sections 228c, 228e of Title 45] become reentitled to such annuity for any month prior to the effective date of the relevant amendments made by this Act to section 5(l)(1)(ii) of the Railroad Retirement Act [former 45 U.S.C. 228e(l)(1)(ii)]."

#### § 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 "employment" 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

(C) is the spouse or dependent child (as defined in regulations) of an individual described in subparagraph (A) or (B);

(2) is medically determined to have end stage renal disease; and

(3) has filed an application for benefits under this section;

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.

##### (b) Duration of period of entitlement

Subject to subsection (c) of this section, entitlement of an individual to benefits under part A and eligibility to enroll under part B of subchapter XVIII of this chapter by reasons of this section on the basis of end stage renal disease—

(1) shall begin with—

(A) the third month after the month in which a regular course of renal dialysis is initiated, or

(B) the month in which such individual receives a kidney transplant, or (if earlier) the

first month in which such individual is admitted as an inpatient to an institution which is a hospital meeting the requirements of section 1395x(e) of this title (and such additional requirements as the Secretary may prescribe under section 1395rr(b) of this title for such institutions) in preparation for or anticipation of kidney transplantation, but only if such transplantation occurs in that month or in either of the next two months,

whichever first occurs (but no earlier than one year preceding the month of the filing of an application for benefits under this section); and

(2) shall end, in the case of an individual who receives a kidney transplant, with the thirty-sixth month after the month in which such individual receives such transplant or, in the case of an individual who has not received a kidney transplant and no longer requires a regular course of dialysis, with the twelfth month after the month in which such course of dialysis is terminated.

**(c) Individuals participating in self-care dialysis training programs; kidney transplant failures; resumption of previously terminated regular course of dialysis**

Notwithstanding the provisions of subsection (b) of this section—

(1) in the case of any individual who participates in a self-care dialysis training program prior to the third month after the month in which such individual initiates a regular course of renal dialysis in a renal dialysis facility or provider of services meeting the requirements of section 1395rr(b) of this title, entitlement to benefits under part A and eligibility to enroll under part B of subchapter XVIII of this chapter shall begin with the month in which such regular course of renal dialysis is initiated;

(2) in any case in which a kidney transplant fails (whether during or after the thirty-six-month period specified in subsection (b)(2) of this section) and as a result the individual who received such transplant initiates or resumes a regular course of renal dialysis, entitlement to benefits under part A and eligibility to enroll under part B of subchapter XVIII of this chapter shall begin with the month in which such course is initiated or resumed; and

(3) in any case in which a regular course of renal dialysis is resumed subsequent to the termination of an earlier course, entitlement to benefits under part A and eligibility to enroll under part B of subchapter XVIII of this chapter shall begin with the month in which such regular course of renal dialysis is resumed.

**(c)<sup>1</sup> Continuing eligibility of certain terminated individuals**

For purposes of this section, each person whose monthly insurance benefit for any month is terminated or is otherwise not payable solely by reason of paragraph (1) or (7) of section 425(c)<sup>2</sup> of this title shall be treated as entitled to such benefit for such month.

<sup>1</sup> So in original. Probably should be "(d)".

<sup>2</sup> See References in Text note below.

(Aug. 14, 1935, ch. 531, title II, §226A, as added Pub. L. 95-292, §1(a), June 13, 1978, 92 Stat. 307; amended Pub. L. 97-248, title II, §278(b)(2)(C), Sept. 3, 1982, 96 Stat. 561; Pub. L. 97-448, title III, §309(b)(1), Jan. 12, 1983, 96 Stat. 2408; Pub. L. 99-272, title XIII, §13205(b)(2)(B), Apr. 7, 1986, 100 Stat. 317; Pub. L. 103-296, title II, §201(a)(3)(D)(ii), Aug. 15, 1994, 108 Stat. 1497.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (a)(1)(A), (B), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93-445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

Section 425(c) of this title, referred to in subsec. (c), was repealed by Pub. L. 104-121, title I, §105(a)(4), Mar. 29, 1996, 110 Stat. 853.

AMENDMENTS

1994—Subsec. (c). Pub. L. 103-296 added subsec. (c) relating to continuing eligibility of certain terminated individuals.

1986—Subsec. (a)(1)(A)(ii), (B)(iii). Pub. L. 99-272 substituted "medicare qualified government employment" for "medicare qualified Federal employment".

1983—Subsec. (a)(1)(B)(iii). Pub. L. 97-448 substituted "section 410(p)" for "410(p)" and struck out "after December 31, 1982,".

1982—Subsec. (a)(1)(A). Pub. L. 97-248 designated existing provisions as cl. (i), substituted "within the meaning of the term 'employment' for purposes of this subchapter" for "in the term 'employment' as defined in this chapter", and added cl. (ii).

Subsec. (a)(1)(B). Pub. L. 97-248 designated "is entitled to monthly insurance benefits under this subchapter" as cl. (i), substituted "(ii) is entitled to an annuity under the Railroad Retirement Act of 1974" for "or an annuity under the Railroad Retirement Act of 1974", and added cl. (iii).

Subsec. (a)(1)(C), (D). Pub. L. 97-248 combined former subpars. (C) and (D) into subpar. (C) and substituted a reference to individuals described in subpar. (A) or (B) for a more detailed definition of such individuals.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-296 applicable with respect to benefits based on disability (as defined in section 425(c)(9) of this title) which are otherwise payable in months beginning after 180 days after Aug. 15, 1994, with Secretary of Health and Human Services to issue regulations necessary to carry out such amendment not later than 180 days after Aug. 15, 1994, see section 201(a)(3)(E)(i) of Pub. L. 103-296, set out as an Effective Date of 1994 Amendment; Sunset Provision note under section 425 of this title.

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 1983 AMENDMENT

Pub. L. 97-448, title III, §309(c)(2), Jan. 12, 1983, 96 Stat. 2410, provided that: "Any amendment to the Social Security Act [42 U.S.C. 301 et seq.] made by this section [amending this section and sections 410, 1320c-2, 1320c-3, 1395d, 1395f, 1395r, 1395y, 1395cc, 1395mm, 1395ww, 1396b, 1396n, 1396o, and 1396p of this title] shall be effective as if it had been originally included as a part of that provision of the Social Security Act to which it

relates, as such provision of such Act was amended or added by the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97-248, Sept. 3, 1982, 96 Stat. 324].”

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 effective on and after Jan. 1, 1983, see section 278(c)(2)(A) of Pub. L. 97-248, set out as a note under section 426 of this title.

EFFECTIVE DATE

Section effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95-292, set out as an Effective Date of 1978 Amendment note under section 426 of this title.

**§ 426a. Transitional provision on eligibility of uninsured individuals for hospital insurance benefits**

**(a) Entitlement to benefits**

Anyone who—

- (1) has attained the age of 65,
- (2)(A) attained such age before 1968, or (B) has not less than 3 quarters of coverage (as defined in this subchapter or section 228e(l) of title 45), whenever acquired, for each calendar year elapsing after 1966 and before the year in which he attained such age,
- (3) is not, and upon filing application for monthly insurance benefits under section 402 of this title would not be, entitled to hospital insurance benefits under section 426 of this title, and is not certifiable as a qualified railroad retirement beneficiary under section 228s-2 of title 45,
- (4) is a resident of the United States (as defined in section 410(i) of this title), 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 so defined) continuously during the 5 years immediately preceding the month in which he files application under this section, and
- (5) has filed an application under this section in such manner and in accordance with such other requirements as may be prescribed in regulations of the Secretary,

shall (subject to the limitations in this section) be deemed, solely for purposes of section 426 of this title, to be entitled to monthly insurance benefits under such section 402 for each month, beginning with the first month in which he meets the requirements of this subsection and ending with the month in which he dies, or, if earlier, the month before the month in which he becomes (or upon filing application for monthly insurance benefits under section 402 of this title would become) entitled to hospital insurance benefits under section 426 of this title or becomes certifiable as a qualified railroad retirement beneficiary. An individual who would have met the preceding requirements of this subsection in any month had he filed application under paragraph (5) hereof before the end of such

month shall be deemed to have met such requirements in such month if he files such application before the end of the twelfth month following such month. No application under this section which is filed by an individual more than 3 months before the first month in which he meets the requirements of paragraphs (1), (2), (3), and (4) shall be accepted as an application for purposes of this section.

**(b) Persons ineligible**

The provisions of subsection (a) of this section shall not apply to any individual who—

- (1) is, at the beginning of the first month in which he meets the requirements of subsection (a), a member of any organization referred to in section 410(a)(17)<sup>1</sup> of this title,
- (2) has, prior to the beginning of such first month, been convicted of any offense listed in section 402(u) of this title, or
- (3)(A) at the beginning of such first month is covered by an enrollment in a health benefits plan under chapter 89 of title 5,
  - (B) was so covered on February 16, 1965, or
  - (C) could have been so covered for such first month if he or some other person had availed himself of opportunities to enroll in a health benefits plan under such chapter and to continue such enrollment (but this subparagraph shall not apply unless he or such other person was a Federal employee at any time after February 15, 1965).

Paragraph (3) shall not apply in the case of any individual for the month (or any month thereafter) in which coverage under such a health benefits plan ceases (or would have ceased if he had had such coverage) by reason of his or some other person's separation from Federal service, if he or such other person was not (or would not have been) eligible to continue such coverage after such separation.

**(c) Authorization of appropriations**

There are authorized to be appropriated to the Federal Hospital Insurance Trust Fund (established by section 1395i of this title) from time to time such sums as the Secretary deems necessary for any fiscal year, on account of—

- (1) payments made or to be made during such fiscal year from such Trust Fund under part A of subchapter XVIII of this chapter with respect to individuals who are entitled to hospital insurance benefits under section 426 of this title solely by reason of this section,
- (2) the additional administrative expenses resulting or expected to result therefrom, and
- (3) any loss in interest to such Trust Fund resulting from the payment of such amounts,

in order to place such Trust Fund in the same position at the end of such fiscal year in which it would have been if the preceding subsections of this section had not been enacted.

(Pub. L. 89-97, title I, § 103, July 30, 1965, 79 Stat. 333; Pub. L. 90-248, title I, § 139, title IV, § 403(h), Jan. 2, 1968, 81 Stat. 854, 932.)

REFERENCES IN TEXT

Sections 228e(l) and 228s-2 of title 45, referred to in subsec. (a)(2), (3), are references to sections 5(l) and 21

<sup>1</sup> See References in Text note below.