

has made a good faith effort to meet such requirement before such effective date.”

#### RESTRICTION ON ENFORCEMENT PROCESS

Pub. L. 101-508, title IV, §4801(c), Nov. 5, 1990, 104 Stat. 1388-215, provided that: “The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 of the Social Security Act [42 U.S.C. 1396c] on the basis of the State’s failure to meet the requirements of section 1919(h)(2) of such Act [42 U.S.C. 1396r(h)(2)] before the effective date of guidelines, issued by the Secretary, regarding the establishment of remedies by the State under such section, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirements before such effective date.”

#### STAFFING REQUIREMENTS

Pub. L. 101-508, title IV, §4801(e)(17), Nov. 5, 1990, 104 Stat. 1388-218, as amended by Pub. L. 105-362, title VI, §602(b)(1), Nov. 10, 1998, 112 Stat. 3286, provided that:

“(A) MAINTAINING REGULATORY STANDARDS FOR CERTAIN SERVICES.—Any regulations promulgated and applied by the Secretary of Health and Human Services after the date of the enactment of the Omnibus Budget Reconciliation Act of 1987 [Dec. 22, 1987] with respect to services described in clauses (ii), (iv), and (v) of section 1919(b)(4)(A) of the Social Security Act [42 U.S.C. 1396r(b)(4)(A)(ii), (iv), (v)] shall include requirements for providers of such services that are at least as strict as the requirements applicable to providers of such services prior to the enactment of the Omnibus Budget Reconciliation Act of 1987.

“(B) STUDY ON STAFFING REQUIREMENTS IN NURSING FACILITIES.—The Secretary shall conduct a study and report to Congress no later than January 1, 1999, on the appropriateness of establishing minimum caregiver to resident ratios and minimum supervisor to caregiver ratios for skilled nursing facilities serving as providers of services under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] and nursing facilities receiving payments under a State plan under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], and shall include in such study recommendation regarding appropriate minimum ratios.”

#### NURSE AIDE TRAINING AND COMPETENCY EVALUATION; SATISFACTION OF REQUIREMENTS; WAIVER

For satisfaction of training and competency evaluation requirements of subsec. (b)(5)(A) of this section and section 1395i-3(b)(5)(A) of this title and authorization for a State to waive such competency evaluation requirements, see section 6901(b)(4)(B)-(D) of Pub. L. 101-239, set out as a note under section 1395i-3 of this title.

#### PUBLICATION OF PROPOSED REGULATIONS RESPECTING PREADMISSION SCREENING AND ANNUAL RESIDENT REVIEW

Pub. L. 101-239, title VI, §6901(c), Dec. 19, 1989, 103 Stat. 2300, provided that: “The Secretary of Health and Human Services shall issue proposed regulations to establish the criteria described in section 1919(f)(8)(A) of the Social Security Act [42 U.S.C. 1396r(f)(8)(A)] by not later than 90 days after the date of the enactment of this Act [Dec. 19, 1989].”

#### EVALUATION AND REPORT ON IMPLEMENTATION OF RESIDENT ASSESSMENT PROCESS

Pub. L. 100-203, title IV, §4211(c), Dec. 22, 1987, 101 Stat. 1330-196, directed Secretary of Health and Human Services to evaluate and report to Congress by not later than Jan. 1, 1993, on implementation of resident assessment process for residents of nursing facilities under amendments made by section 4211(c).

#### REPORT ON STAFFING REQUIREMENTS

Pub. L. 100-203, title IV, §4211(k), Dec. 22, 1987, 101 Stat. 1330-207, directed Secretary of Health and Human

Services to report to Congress, by not later than Jan. 1, 1993, on progress made in implementing the nursing facility staffing requirements of 42 U.S.C. 1396r(b)(4)(C), including the number and types of waivers approved under subparagraph (C)(ii) of such section and the number of facilities which received waivers.

#### ANNUAL REPORT ON STATUTORY COMPLIANCE AND ENFORCEMENT ACTIONS

Pub. L. 100-203, title IV, §4215, Dec. 22, 1987, 101 Stat. 1330-220, as amended by Pub. L. 101-508, title IV, §4801(b)(5)(B), Nov. 5, 1990, 104 Stat. 1388-214, provided that: “The Secretary of Health and Human Services shall report to the Congress annually on the extent to which nursing facilities are complying with the requirements of subsections (b), (c), and (d) of section 1919 of the Social Security Act [42 U.S.C. 1396r(b), (c), (d)] (as added by the amendments made by this part) and the number and type of enforcement actions taken by States and the Secretary under section 1919(h) of such Act (as added by section 4213 of this Act). Each such report shall also include a summary of the information reported by States under section 1919(e)(7)(C)(iv) of such Act.”

### § 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, or

(ii) in the case of a woman who does not file an application by the last day of the month following the month during which the provider makes the determination referred to in subparagraph (A), such last day; 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 or 254c of this title,

(II) subchapter V of this chapter, or

(III) title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.];

(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;

(iii) participates in a State perinatal program; or

(iv) is the Indian Health Service or is a health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act (Public Law 93-638) [25 U.S.C. 450f et seq.].

The term “qualified provider” also includes a qualified entity, as defined in section 1396r-1a(b)(3) of this title.

**(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 State plan by not later than the last day of the month following the month during 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 by not later than the last day of the month following the month during which the determination is made, which application may be the application used for the receipt of medical assistance by individuals described in section 1396a(d)(1)(A) of this title.

**(d) Ambulatory prenatal care as medical assistance**

Notwithstanding any other provision of this subchapter, ambulatory prenatal care that—

(1) is furnished to a pregnant woman—

(A) during a presumptive eligibility period,

(B) by a provider that is eligible for payments under the State plan; 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.

**(e) Option to provide presumptive eligibility**

If the State has elected the option to provide a presumptive eligibility period under this section or section 1396r-1a of this title, the State may elect to provide a presumptive eligibility period (as defined in subsection (b)(1)) for individuals who are eligible for medical assistance under clause (i)(VIII), clause (i)(IX), or clause

(ii)(XX) of subsection (a)(10)(A)<sup>1</sup> or section 1396u-1 of this title in the same manner as the State provides for such a period under this section or section 1396r-1a of this title, subject to such guidance as the Secretary shall establish.

(Aug. 14, 1935, ch. 531, title XIX, §1920, as added Pub. L. 99-509, title IX, §9407(b), Oct. 21, 1986, 100 Stat. 2058; amended Pub. L. 100-360, title IV, §411(k)(16)(A), (B), July 1, 1988, 102 Stat. 799; Pub. L. 100-485, title VI, §608(d)(26)(L), Oct. 13, 1988, 102 Stat. 2422; Pub. L. 101-508, title IV, §4605(a), (b), Nov. 5, 1990, 104 Stat. 1388-169; Pub. L. 106-113, div. B, §1000(a)(6) [title VI, §608(q)], Nov. 29, 1999, 113 Stat. 1536, 1501A-397; Pub. L. 111-3, title I, §113(b)(2), Feb. 4, 2009, 123 Stat. 34; Pub. L. 111-148, title II, §§2001(a)(4)(B), (e)(2)(C), 2004(b), Mar. 23, 2010, 124 Stat. 274, 279, 283.)

REFERENCES IN TEXT

The Indian Health Care Improvement Act, referred to in subsec. (b)(2)(D)(i)(III), is Pub. L. 94-437, Sept. 30, 1976, 90 Stat. 1400. Title V of the Indian Health Care Improvement Act is classified generally to subchapter IV (§1651 et seq.) of chapter 18 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

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, which is set out as a note under section 612c of Title 7, Agriculture.

The Indian Self-Determination Act (Public Law 93-638), referred to in subsec. (b)(2)(D)(iv), is title I of Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2206, which is classified principally to part A (§450f et seq.) of subchapter II 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.

PRIOR PROVISIONS

A prior section 1920 of act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1396v of this title.

AMENDMENTS

2010—Subsec. (e). Pub. L. 111-148, §2004(b), inserted “, clause (i)(IX),” after “clause (i)(VIII)”.

Pub. L. 111-148, §2001(e)(2)(C), inserted “or clause (ii)(XX)” after “clause (i)(VIII)”.

Pub. L. 111-148, §2001(a)(4)(B), added subsec. (e).

2009—Subsec. (b). Pub. L. 111-3 inserted concluding provisions.

1999—Subsec. (b)(2)(D)(i)(I). Pub. L. 106-113 substituted “section 254b or 254c of this title,” for “section 254b, 254c, or 256 of this title.”

1990—Subsec. (b)(1)(B). Pub. L. 101-508, §4605(a)(1), inserted “or” at end of cl. (i), redesignated cl. (iii) as (ii) and amended it generally, and struck out former cl. (ii). Prior to amendment, cls. (ii) and (iii) read as follows:

“(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”.

Subsec. (c)(2)(B). Pub. L. 101-508, §4605(a)(2), substituted “by not later than the last day of the month following the month during which” for “within 14 calendar days after the date on which”.

<sup>1</sup>So in original. Probably means subsection (a)(10)(A) of section 1396a of this title.

Subsec. (c)(3). Pub. L. 101-508, §4605(b), inserted before period at end “, which application may be the application used for the receipt of medical assistance by individuals described in section 1396a(l)(1)(A) of this title”.

Pub. L. 101-508, §4605(a)(2), substituted “by not later than the last day of the month following the month during which” for “within 14 calendar days after the date on which”.

1988—Subsec. (b)(2)(D)(i). Pub. L. 100-360, §411(k)(16)(B)(i), substituted “section 254b, 254c, or 256 of this title,” for “section 254b of this title or section 254c of this title, or” in subcl. (I), substituted “chapter, or” for “chapter;” in subcl. (II), and added subcl. (III).

Subsec. (b)(2)(D)(ii)(II). Pub. L. 100-360, §411(k)(16)(B)(ii), as amended by Pub. L. 100-485, §608(d)(26)(L)(i), struck out “or” after “1973;”.

Subsec. (b)(2)(D)(iii). Pub. L. 100-360, §411(k)(16)(B)(iii), as added by Pub. L. 100-485, §608(d)(26)(L)(iii), substituted “program; or” for “program.”

Subsec. (b)(2)(D)(iv). Pub. L. 100-360, §411(k)(16)(B)(iv), formerly §411(k)(16)(B)(iii), as redesignated by Pub. L. 100-485, §608(d)(26)(L)(ii), added cl. (iv).

Subsec. (d)(1)(B). Pub. L. 100-360, §411(k)(16)(A), substituted “by a provider that is eligible for payments under the State plan” for “by a qualified provider”.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 2004(b) of Pub. L. 111-148 effective Jan. 1, 2014, see section 2004(d) of Pub. L. 111-148, set out as an Effective and Termination Dates of 2010 Amendment note under section 1396a of this title.

#### EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-3 effective Apr. 1, 2009, and applicable to child health assistance and medical assistance provided on or after that date, with certain exceptions, see section 3 of Pub. L. 111-3, set out as an Effective Date note under section 1396 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title IV, §4605(c), Nov. 5, 1990, 104 Stat. 1388-169, provided that:

“(1) The amendments made by subsection (a) [amending this section] apply to payments under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

“(2) The amendment made by subsection (b) [amending this section] shall be effective as if included in the enactment of section 9407(b) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99-509, enacting this section].”

#### EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100-485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100-360, see section 608(g)(1) of Pub. L. 100-485, set out as a note under section 704 of this title.

Pub. L. 100-360, title IV, §411(k)(16)(C), July 1, 1988, 102 Stat. 799, provided that: “The amendments made by this paragraph [amending this section] shall be effective as if they were included in section 9407(b) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99-509].”

#### 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.

## § 1396r-1a. Presumptive eligibility for children

### (a) In general

A State plan approved under section 1396a of this title may provide for making medical assistance with respect to health care items and services covered under the State plan available to a child during a presumptive eligibility period.

### (b) Definitions; regulations

For purposes of this section:

(1) The term “child” means an individual under 19 years of age.

(2) The term “presumptive eligibility period” means, with respect to a child, the period that—

(A) begins with the date on which a qualified entity determines, on the basis of preliminary information, that the family income of the child 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 child for medical assistance under the State plan, or

(ii) in the case of a child on whose behalf an application is not filed by the last day of the month following the month during which the entity makes the determination referred to in subparagraph (A), such last day.

(3)(A) Subject to subparagraph (B), the term “qualified entity” means any entity that—

(i)(I) is eligible for payments under a State plan approved under this subchapter and provides items and services described in subsection (a) of this section, (II) is authorized to determine eligibility of a child to participate in a Head Start program under the Head Start Act (42 U.S.C. 9831 et seq.), eligibility of a child to receive child care services for which financial assistance is provided under the Child Care and Development Block Grant Act of 1990 [42 U.S.C. 9857 et seq.], eligibility of an infant or child to receive assistance under the special supplemental nutrition program for women, infants, and children (WIC) under section 1786 of this title<sup>1</sup> eligibility of a child for medical assistance under the State plan under this subchapter, or eligibility of a child for child health assistance under the program funded under subchapter XXI of this chapter, (III) is an elementary school or secondary school, as such terms are defined in section 8801 of title 20,<sup>2</sup> an elementary or secondary school operated or supported by the Bureau of Indian Affairs, a State or tribal child support enforcement agency, an organization that is providing emergency food and shelter under a grant under the Stewart B. McKinney Homeless Assistance Act<sup>2</sup> [42 U.S.C. 11301 et seq.], or a State or tribal office or entity involved in enrollment in the program under

<sup>1</sup> So in original. A comma probably should appear after “title”.

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