

(2) the facility ceases to be used for the purposes for which it was acquired (unless the Assistant Secretary determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from the obligation to do so);

the United States shall be entitled to recover from the applicant or other owner of the facility an amount which bears to the then value of the facility (or so much thereof as constituted an approved project or projects) the same ratio as the amount of such Federal funds bore to the cost of the facility financed with the aid of such funds. Such value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which such facility is situated.

(Pub. L. 89-73, title III, §312, as added Pub. L. 95-478, title I, §103(b), Oct. 18, 1978, 92 Stat. 1534; amended Pub. L. 103-171, §3(a)(13), Dec. 2, 1993, 107 Stat. 1990.)

AMENDMENTS

1993—Par. (2). Pub. L. 103-171 substituted “Assistant Secretary” for “Commissioner”.

EFFECTIVE DATE

Section effective at close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 3030c. Audit; request for information

(a) The Assistant Secretary and the Comptroller General of the United States or any of their duly authorized representatives shall have access for the purpose of audit and examination to any books, documents, papers, and records that are pertinent to a grant or contract received under this subchapter.

(b) State agencies and area agencies on aging shall not request information or data from providers which is not pertinent to services furnished pursuant to this chapter or a payment made for such services.

(Pub. L. 89-73, title III, §313, as added Pub. L. 95-478, title I, §103(b), Oct. 18, 1978, 92 Stat. 1535; amended Pub. L. 98-459, title III, §311, Oct. 9, 1984, 98 Stat. 1779; Pub. L. 103-171, §3(a)(13), Dec. 2, 1993, 107 Stat. 1990.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-171 substituted “Assistant Secretary” for “Commissioner”.

1984—Pub. L. 98-459 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

EFFECTIVE DATE

Section effective at close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 3030c-1. Rights relating to in-home services for frail older individuals

The Assistant Secretary shall require entities that provide in-home services under this subchapter to promote the rights of each older indi-

vidual who receives such services. Such rights include the following:

(1) The right—

(A) to be fully informed in advance about each in-home service provided by such entity under this subchapter and about any change in such service that may affect the well-being of such individual; and

(B) to participate in planning and changing an in-home service provided under this subchapter by such entity unless such individual is judicially adjudged incompetent.

(2) The right to voice a grievance with respect to such service that is or fails to be so provided, without discrimination or reprisal as a result of voicing such grievance.

(3) The right to confidentiality of records relating to such individual.

(4) The right to have the property of such individual treated with respect.

(5) The right to be fully informed (orally and in writing), in advance of receiving an in-home service under this subchapter, of such individual's rights and obligations under this subchapter.

(Pub. L. 89-73, title III, §314, as added Pub. L. 102-375, title III, §311, Sept. 30, 1992, 106 Stat. 1237; amended Pub. L. 103-171, §§2(11), 3(a)(13), Dec. 2, 1993, 107 Stat. 1989, 1990.)

AMENDMENTS

1993—Pub. L. 103-171 struck out “(a) PROMOTION.—” before “The Assistant” and substituted “Assistant Secretary” for “Commissioner”.

§ 3030c-2. Consumer contributions

(a) Cost sharing

(1) In general

Except as provided in paragraphs (2) and (3), a State is permitted to implement cost sharing for all services funded by this chapter by recipients of the services.

(2) Exception

The State is not permitted to implement the cost sharing described in paragraph (1) for the following services:

(A) Information and assistance, outreach, benefits counseling, or case management services.

(B) Ombudsman, elder abuse prevention, legal assistance, or other consumer protection services.

(C) Congregate and home delivered meals.

(D) Any services delivered through tribal organizations.

(3) Prohibitions

A State or tribal organization shall not permit the cost sharing described in paragraph (1) for any services delivered through tribal organizations. A State shall not permit cost sharing by a low-income older individual if the income of such individual is at or below the Federal poverty line. A State may exclude from cost sharing low-income individuals whose incomes are above the Federal poverty line. A State shall not consider any assets, savings, or other property owned by older individuals when defining low-income individuals who are

exempt from cost sharing, when creating a sliding scale for the cost sharing, or when seeking contributions from any older individual.

(4) Payment rates

If a State permits the cost sharing described in paragraph (1), such State shall establish a sliding scale, based solely on individual income and the cost of delivering services.

(5) Requirements

If a State permits the cost sharing described in paragraph (1), such State shall require each area agency on aging in the State to ensure that each service provider involved, and the area agency on aging, will—

(A) protect the privacy and confidentiality of each older individual with respect to the declaration or nondeclaration of individual income and to any share of costs paid or unpaid by an individual;

(B) establish appropriate procedures to safeguard and account for cost share payments;

(C) use each collected cost share payment to expand the service for which such payment was given;

(D) not consider assets, savings, or other property owned by an older individual in determining whether cost sharing is permitted;

(E) not deny any service for which funds are received under this chapter for an older individual due to the income of such individual or such individual's failure to make a cost sharing payment;

(F) determine the eligibility of older individuals to cost share solely by a confidential declaration of income and with no requirement for verification; and

(G) widely distribute State created written materials in languages reflecting the reading abilities of older individuals that describe the criteria for cost sharing, the State's sliding scale, and the mandate described under subparagraph (E).

(6) Waiver

An area agency on aging may request a waiver to the State's cost sharing policies, and the State shall approve such a waiver if the area agency on aging can adequately demonstrate that—

(A) a significant proportion of persons receiving services under this chapter subject to cost sharing in the planning and service area have incomes below the threshold established in State policy; or

(B) cost sharing would be an unreasonable administrative or financial burden upon the area agency on aging.

(b) Voluntary contributions

(1) In general

Voluntary contributions shall be allowed and may be solicited for all services for which funds are received under this chapter if the method of solicitation is noncoercive. Such contributions shall be encouraged for individuals whose self-declared income is at or above 185 percent of the poverty line, at contribution levels based on the actual cost of services.

(2) Local decision

The area agency on aging shall consult with the relevant service providers and older individuals in agency's planning and service area in a State to determine the best method for accepting voluntary contributions under this subsection.

(3) Prohibited acts

The area agency on aging and service providers shall not means test for any service for which contributions are accepted or deny services to any individual who does not contribute to the cost of the service.

(4) Required acts

The area agency on aging shall ensure that each service provider will—

(A) provide each recipient with an opportunity to voluntarily contribute to the cost of the service;

(B) clearly inform each recipient that there is no obligation to contribute and that the contribution is purely voluntary;

(C) protect the privacy and confidentiality of each recipient with respect to the recipient's contribution or lack of contribution;

(D) establish appropriate procedures to safeguard and account for all contributions; and

(E) use all collected contributions to expand the service for which the contributions were given and to supplement (not supplant) funds received under this chapter.

(c) Participation

(1) In general

The State and area agencies on aging, in conducting public hearings on State and area plans, shall solicit the views of older individuals, providers, and other stakeholders on implementation of cost-sharing in the service area or the State.

(2) Plans

Prior to the implementation of cost sharing under subsection (a) of this section, each State and area agency on aging shall develop plans that are designed to ensure that the participation of low-income older individuals (with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas) receiving services will not decrease with the implementation of the cost sharing under such subsection.

(d) Evaluation

Not later than 1 year after November 13, 2000, and annually thereafter, the Assistant Secretary shall conduct a comprehensive evaluation of practices for cost sharing to determine its impact on participation rates (with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas). If the Assistant Secretary finds that there is a disparate impact upon low-income or minority older individuals or older individuals residing in rural areas in any State or region within the

State regarding the provision of services, the Assistant Secretary shall take corrective action to assure that such services are provided to all older individuals without regard to the cost sharing criteria.

(Pub. L. 89-73, title III, §315, as added Pub. L. 106-501, title III, §310, Nov. 13, 2000, 114 Stat. 2247; amended Pub. L. 109-365, title III, §310, Oct. 17, 2006, 120 Stat. 2546.)

CODIFICATION

Pub. L. 106-501, §310, which directed the addition of this section at the end of Part A of title III (42 U.S.C. 3021 et seq.), was executed by adding this section at the end of Part A of title III of the Older Americans Act of 1965 to reflect the probable intent of Congress.

AMENDMENTS

2006—Subsec. (b)(1). Pub. L. 109-365, §310(1)(A), substituted “if” for “provided that” and inserted at end “Such contributions shall be encouraged for individuals whose self-declared income is at or above 185 percent of the poverty line, at contribution levels based on the actual cost of services.”

Subsec. (b)(4)(E). Pub. L. 109-365, §310(1)(B), inserted “and to supplement (not supplant) funds received under this chapter” after “given”.

Subsec. (c)(2). Pub. L. 109-365, §310(2), substituted “(with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas)” for “(with particular attention to low-income minority individuals and older individuals residing in rural areas)”.

Subsec. (d). Pub. L. 109-365, §310(3), substituted “(with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas)” for “with particular attention to low-income and minority older individuals and older individuals residing in rural areas”.

§ 3030c-3. Waivers

(a) In general

The Assistant Secretary may waive any of the provisions specified in subsection (b) of this section with respect to a State, upon receiving an application by the State agency containing or accompanied by documentation sufficient to establish, to the satisfaction of the Assistant Secretary, that—

(1) approval of the State legislature has been obtained or is not required with respect to the proposal for which waiver is sought;

(2) the State agency has collaborated with the area agencies on aging in the State and other organizations that would be affected with respect to the proposal for which waiver is sought;

(3) the proposal has been made available for public review and comment, including the opportunity for a public hearing upon request, within the State (and a summary of all of the comments received has been included in the application); and

(4) the State agency has given adequate consideration to the probable positive and negative consequences of approval of the waiver application, and the probable benefits for older individuals can reasonably be expected to outweigh any negative consequences, or particular circumstances in the State otherwise justify the waiver.

(b) Requirements subject to waiver

The provisions of this subchapter that may be waived under this section are—

(1) any provision of sections 3025, 3026, and 3027 of this title requiring statewide uniformity of programs carried out under this subchapter, to the extent necessary to permit demonstrations, in limited areas of a State, of innovative approaches to assist older individuals;

(2) any area plan requirement described in section 3026(a) of this title if granting the waiver will promote innovations or improve service delivery and will not diminish services already provided under this chapter;

(3) any State plan requirement described in section 3027(a) of this title if granting the waiver will promote innovations or improve service delivery and will not diminish services already provided under this chapter;

(4) any restriction under paragraph (5) of section 3028(b) of this title, on the amount that may be transferred between programs carried out under part B and part C; and

(5) the requirement of section 3029(c) of this title that certain amounts of a State allotment be used for the provision of services, with respect to a State that reduces expenditures under the State plan of the State (but only to the extent that the non-Federal share of the expenditures is not reduced below any minimum specified in section 3024(d) of this title or any other provision of this subchapter).

(c) Duration of waiver

The application by a State agency for a waiver under this section shall include a recommendation as to the duration of the waiver (not to exceed the duration of the State plan of the State). The Assistant Secretary, in granting such a waiver, shall specify the duration of the waiver, which may be the duration recommended by the State agency or such shorter time period as the Assistant Secretary finds to be appropriate.

(d) Reports to Secretary

With respect to each waiver granted under this section, not later than 1 year after the expiration of such waiver, and at any time during the waiver period that the Assistant Secretary may require, the State agency shall prepare and submit to the Assistant Secretary a report evaluating the impact of the waiver on the operation and effectiveness of programs and services provided under this subchapter.

(Pub. L. 89-73, title III, §316, as added Pub. L. 106-501, title III, §310, Nov. 13, 2000, 114 Stat. 2249.)

CODIFICATION

Pub. L. 106-501, §310, which directed the addition of this section at the end of Part A of title III (42 U.S.C. 3021 et seq.), was executed by adding this section at the end of Part A of title III of the Older Americans Act of 1965 to reflect the probable intent of Congress.