

(vi) A program administered by the Indian Health Service or the Bureau of Indian Affairs or operated by an Indian tribe or a tribal organization.

(Aug. 14, 1935, ch. 531, title XXI, §2110, as added Pub. L. 105-33, title IV, §4901(a), Aug. 5, 1997, 111 Stat. 567; amended Pub. L. 105-100, title I, §162(3), (9), Nov. 19, 1997, 111 Stat. 2189, 2190; Pub. L. 106-554, §1(a)(6) [title VIII, §802(d)(5)], Dec. 21, 2000, 114 Stat. 2763, 2763A-582; Pub. L. 111-3, title V, §§501(b)(1), 505(b), Feb. 4, 2009, 123 Stat. 85, 90; Pub. L. 111-148, title II, §§2102(a)(7), 2302(b), title X, §10203(d)(2)(D), Mar. 23, 2010, 124 Stat. 288, 293, 930; Pub. L. 111-309, title II, §205(d), Dec. 15, 2010, 124 Stat. 3290; Pub. L. 114-95, title IX, §9215(qqq)(2), Dec. 10, 2015, 129 Stat. 2189.)

#### REFERENCES IN TEXT

Section 2701 of the Public Health Service Act, referred to in subsec. (c)(2), (6), is section 2701 of act July 1, 1944, which was classified to section 300gg of this title, was renumbered section 2704, effective for plan years beginning on or after Jan. 1, 2014, with certain exceptions, and amended, by Pub. L. 111-148, title I, §§1201(2), 1563(c)(1), formerly §1562(c)(1), title X, §10107(b)(1), Mar. 23, 2010, 124 Stat. 154, 264, 911, and was transferred to section 300gg-3 of this title. A new section 2701 of act July 1, 1944, related to fair health insurance premiums, was added, effective for plan years beginning on or after Jan. 1, 2014, and amended, by Pub. L. 111-148, title I, §1201(4), title X, §10103(a), Mar. 23, 2010, 124 Stat. 155, 892, and is classified to section 300gg of this title.

#### AMENDMENTS

2015—Subsec. (c)(9)(B)(v). Pub. L. 114-95 made technical amendment to reference in original act which appears in text as reference to section 7801 of title 20.

2010—Subsec. (a)(23). Pub. L. 111-148, §2302(b), which directed insertion of “(concurrent, in the case of an individual who is a child, with care related to the treatment of the child’s condition with respect to which a diagnosis of terminal illness has been made” after “hospice care”, was executed by making the insertion after “Hospice care”, to reflect the probable intent of Congress.

Subsec. (b)(2)(B). Pub. L. 111-148, §10203(d)(2)(D)(i), inserted “except as provided in paragraph (6),” before “a child”.

Subsec. (b)(6). Pub. L. 111-148, §10203(d)(2)(D)(ii), added par. (6).

Subsec. (b)(6)(B). Pub. L. 111-309, §205(d)(1), struck out “per person” before “agency contribution” in heading and substituted “employees” for “each employee”.

Subsec. (b)(6)(C). Pub. L. 111-309, §205(d)(2), struck out “, on a case-by-case basis,” after “determines”.

Subsec. (c)(9)(B)(v). Pub. L. 111-148, §2102(a)(7), substituted “local educational agency (as defined under section 7801 of title 20” for “school or school system”.

2009—Subsec. (b)(1)(C). Pub. L. 111-3, §501(b)(1)(A), inserted “, subject to paragraph (5),” after “subchapter XIX or”.

Subsec. (b)(5). Pub. L. 111-3, §501(b)(1)(B), added par. (5).

Subsec. (c)(9). Pub. L. 111-3, §505(b), added par. (9).

2000—Subsec. (a). Pub. L. 106-554 substituted “section 1397ee(a)(1)(D)(i)” for “section 1397ee(a)(2)(A)” in introductory provisions.

1997—Subsec. (b)(1)(B)(ii). Pub. L. 105-100, §162(3)(A), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “is a child whose family income (as determined under the State child health plan) exceeds the medicaid applicable income level (as defined in paragraph (4)), but does not exceed 50 percentage points above the medicaid applicable income level; and”.

Subsec. (b)(4). Pub. L. 105-100, §162(3)(B), substituted “March 31, 1997” for “June 1, 1997” and “1396a(l)(2) or

1396d(n)(2) of this title (as selected by a State)” for “1396a(l)(2) of this title”.

Subsec. (c)(3). Pub. L. 105-100, §162(9), made technical amendment to reference in original act which appears in text as reference to section 300gg-91 of this title.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114-95, set out as a note under section 6301 of Title 20, Education.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-148, title II, §2102(a), Mar. 23, 2010, 124 Stat. 288, provided that the amendment made by section 2102(a)(7) of Pub. L. 111-148 is effective as if included in the enactment of the Children’s Health Insurance Program Reauthorization Act of 2009 (Pub. L. 111-3).

#### 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 2000 AMENDMENT

Amendment by Pub. L. 106-554 effective as if included in the enactment of section 4901 of Pub. L. 105-33, see section 1(a)(6) [title VIII, §802(f)] of Pub. L. 106-554, set out as a note under section 1396d of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-100, title I, §162, Nov. 19, 1997, 111 Stat. 2188, provided in part that the amendment made by that section is effective as if included in the enactment of subtitle J (§§4901-4923) of title IV of the Balanced Budget Act of 1997, Pub. L. 105-33.

#### CHIP ELIGIBILITY FOR CHILDREN INELIGIBLE FOR MEDICAID AS A RESULT OF ELIMINATION OF DISREGARDS

Pub. L. 111-148, title II, §2101(f), Mar. 23, 2010, 124 Stat. 287, provided that: “Notwithstanding any other provision of law, a State shall treat any child who is determined to be ineligible for medical assistance under the State Medicaid plan or under a waiver of the plan as a result of the elimination of the application of an income disregard based on expense or type of income, as required under section 1902(e)(14) of the Social Security Act [42 U.S.C. 1396a(e)(14)] (as added by this Act), as a targeted low-income child under section 2110(b) [42 U.S.C. 1397jj(b)] (unless the child is excluded under paragraph (2) of that section) and shall provide child health assistance to the child under the State child health plan (whether implemented under title XIX or XXI, or both, of the Social Security Act [42 U.S.C. 1396 et seq., 1397aa et seq.].)”

#### § 1397kk. Phase-out of coverage for nonpregnant childless adults; conditions for coverage of parents

##### (a) Termination of coverage for nonpregnant childless adults

###### (1) No new CHIP waivers; automatic extensions at State option through 2009

Notwithstanding section 1315 of this title or any other provision of this subchapter, except as provided in this subsection—

(A) the Secretary shall not on or after February 4, 2009, approve or renew a waiver, experimental, pilot, or demonstration project that would allow funds made available under this subchapter to be used to pro-

vide child health assistance or other health benefits coverage to a nonpregnant childless adult; and

(B) notwithstanding the terms and conditions of an applicable existing waiver, the provisions of paragraph (2) shall apply for purposes of any period beginning on or after January 1, 2010, in determining the period to which the waiver applies, the individuals eligible to be covered by the waiver, and the amount of the Federal payment under this subchapter.

**(2) Termination of CHIP coverage under applicable existing waivers at the end of 2009**

**(A) In general**

No funds shall be available under this subchapter for child health assistance or other health benefits coverage that is provided to a nonpregnant childless adult under an applicable existing waiver after December 31, 2009.

**(B) Extension upon State request**

If an applicable existing waiver described in subparagraph (A) would otherwise expire before January 1, 2010, notwithstanding the requirements of subsections (e) and (f) of section 1315 of this title, a State may submit, not later than September 30, 2009, a request to the Secretary for an extension of the waiver. The Secretary shall approve a request for an extension of an applicable existing waiver submitted pursuant to this subparagraph, but only through December 31, 2009.

**(C) Application of enhanced FMAP**

The enhanced FMAP determined under section 1397ee(b) of this title shall apply to expenditures under an applicable existing waiver for the provision of child health assistance or other health benefits coverage to a nonpregnant childless adult during the period beginning on February 4, 2009, and ending on December 31, 2009.

**(3) State option to apply for Medicaid waiver to continue coverage for nonpregnant childless adults**

**(A) In general**

Each State for which coverage under an applicable existing waiver is terminated under paragraph (2)(A) may submit, not later than September 30, 2009, an application to the Secretary for a waiver under section 1315 of this title of the State plan under subchapter XIX to provide medical assistance to a nonpregnant childless adult whose coverage is so terminated (in this subsection referred to as a "Medicaid nonpregnant childless adults waiver").

**(B) Deadline for approval**

The Secretary shall make a decision to approve or deny an application for a Medicaid nonpregnant childless adults waiver submitted under subparagraph (A) within 90 days of the date of the submission of the application. If no decision has been made by the Secretary as of December 31, 2009, on the application of a State for a Medicaid nonpreg-

nant childless adults waiver that was submitted to the Secretary by September 30, 2009, the application shall be deemed approved.

**(C) Standard for budget neutrality**

The budget neutrality requirement applicable with respect to expenditures for medical assistance under a Medicaid nonpregnant childless adults waiver shall—

(i) in the case of fiscal year 2010, allow expenditures for medical assistance under subchapter XIX for all such adults to not exceed the total amount of payments made to the State under paragraph (2)(B) for fiscal year 2009, increased by the percentage increase (if any) in the projected nominal per capita amount of National Health Expenditures for 2010 over 2009, as most recently published by the Secretary; and

(ii) in the case of any succeeding fiscal year, allow such expenditures to not exceed the amount in effect under this subparagraph for the preceding fiscal year, increased by the percentage increase (if any) in the projected nominal per capita amount of National Health Expenditures for the calendar year that begins during the year involved over the preceding calendar year, as most recently published by the Secretary.

**(b) Rules and conditions for coverage of parents of targeted low-income children**

**(1) Two-year period; automatic extension at State option through fiscal year 2011**

**(A) No new CHIP waivers**

Notwithstanding section 1315 of this title or any other provision of this subchapter, except as provided in this subsection—

(i) the Secretary shall not on or after February 4, 2009, approve or renew a waiver, experimental, pilot, or demonstration project that would allow funds made available under this subchapter to be used to provide child health assistance or other health benefits coverage to a parent of a targeted low-income child; and

(ii) notwithstanding the terms and conditions of an applicable existing waiver, the provisions of paragraphs (2) and (3) shall apply for purposes of any fiscal year beginning on or after October 1, 2011, in determining the period to which the waiver applies, the individuals eligible to be covered by the waiver, and the amount of the Federal payment under this subchapter.

**(B) Extension upon State request**

If an applicable existing waiver described in subparagraph (A) would otherwise expire before October 1, 2011, and the State requests an extension of such waiver, the Secretary shall grant such an extension, but only, subject to paragraph (2)(A), through September 30, 2011.

**(C) Application of enhanced FMAP**

The enhanced FMAP determined under section 1397ee(b) of this title shall apply to expenditures under an applicable existing waiver for the provision of child health as-

assistance or other health benefits coverage to a parent of a targeted low-income child during the third and fourth quarters of fiscal year 2009 and during fiscal years 2010 and 2011.

**(2) Rules for fiscal years 2012 through 2013**

**(A) Payments for coverage limited to block grant funded from State allotment**

Any State that provides child health assistance or health benefits coverage under an applicable existing waiver for a parent of a targeted low-income child may elect to continue to provide such assistance or coverage through fiscal year 2012 or 2013, subject to the same terms and conditions that applied under the applicable existing waiver, unless otherwise modified in subparagraph (B).

**(B) Terms and conditions**

**(i) Block grant set aside from State allotment**

If the State makes an election under subparagraph (A), the Secretary shall set aside for the State for each such fiscal year an amount equal to the Federal share of 110 percent of the State's projected expenditures under the applicable existing waiver for providing child health assistance or health benefits coverage to all parents of targeted low-income children enrolled under such waiver for the fiscal year (as certified by the State and submitted to the Secretary by not later than August 31 of the preceding fiscal year). In the case of fiscal year 2013, the set aside for any State shall be computed separately for each period described in subparagraphs (A) and (B) of section 1397dd(a)(16) of this title and any reduction in the allotment for either such period under section 1397dd(m)(5) of this title shall be allocated on a pro rata basis to such set aside.

**(ii) Payments from block grant**

The Secretary shall pay the State from the amount set aside under clause (i) for the fiscal year, an amount for each quarter of such fiscal year equal to the applicable percentage determined under clause (iii) or (iv) for expenditures in the quarter for providing child health assistance or other health benefits coverage to a parent of a targeted low-income child.

**(iii) Enhanced FMAP only in fiscal year 2012 for States with significant child outreach or that achieve child coverage benchmarks; FMAP for any other States**

For purposes of clause (ii), the applicable percentage for any quarter of fiscal year 2012 is equal to—

(I) the enhanced FMAP determined under section 1397ee(b) of this title in the case of a State that meets the outreach or coverage benchmarks described in any of subparagraph (A), (B), or (C) of paragraph (3) for fiscal year 2011; or

(II) the Federal medical assistance percentage (as determined under section

1396d(b) of this title without regard to clause (4) of such section) in the case of any other State.

**(iv) Amount of Federal matching payment in 2013**

For purposes of clause (ii), the applicable percentage for any quarter of fiscal year 2013 is equal to—

(I) the REMAP percentage if—

(aa) the applicable percentage for the State under clause (iii) was the enhanced FMAP for fiscal year 2012; and

(bb) the State met either of the coverage benchmarks described in subparagraph (B) or (C) of paragraph (3) for fiscal year 2012; or

(II) the Federal medical assistance percentage (as so determined) in the case of any State to which subclause (I) does not apply.

For purposes of subclause (I), the REMAP percentage is the percentage which is the sum of such Federal medical assistance percentage and a number of percentage points equal to one-half of the difference between such Federal medical assistance percentage and such enhanced FMAP.

**(v) No Federal payments other than from block grant set aside**

No payments shall be made to a State for expenditures described in clause (ii) after the total amount set aside under clause (i) for a fiscal year has been paid to the State.

**(vi) No increase in income eligibility level for parents**

No payments shall be made to a State from the amount set aside under clause (i) for a fiscal year for expenditures for providing child health assistance or health benefits coverage to a parent of a targeted low-income child whose family income exceeds the income eligibility level applied under the applicable existing waiver to parents of targeted low-income children on February 4, 2009.

**(3) Outreach or coverage benchmarks**

For purposes of paragraph (2), the outreach or coverage benchmarks described in this paragraph are as follows:

**(A) Significant child outreach campaign**

The State—

(i) was awarded a grant under section 1397mm of this title for fiscal year 2011;

(ii) implemented 1 or more of the enrollment and retention provisions described in section 1397ee(a)(4) of this title for such fiscal year; or

(iii) has submitted a specific plan for outreach for such fiscal year.

**(B) High-performing State**

The State, on the basis of the most timely and accurate published estimates of the Bureau of the Census, ranks in the lowest 1/3 of States in terms of the State's percentage of low-income children without health insurance.

**(C) State increasing enrollment of low-income children**

The State qualified for a performance bonus payment under section 1397ee(a)(3)(B) of this title for the most recent fiscal year applicable under such section.

**(4) Rules of construction**

Nothing in this subsection shall be construed as prohibiting a State from submitting an application to the Secretary for a waiver under section 1315 of this title of the State plan under subchapter XIX to provide medical assistance to a parent of a targeted low-income child that was provided child health assistance or health benefits coverage under an applicable existing waiver.

**(c) Applicable existing waiver**

For purposes of this section—

**(1) In general**

The term “applicable existing waiver” means a waiver, experimental, pilot, or demonstration project under section 1315 of this title, grandfathered under section 6102(c)(3) of the Deficit Reduction Act of 2005, or otherwise conducted under authority that—

(A) would allow funds made available under this subchapter to be used to provide child health assistance or other health benefits coverage to—

- (i) a parent of a targeted low-income child;
- (ii) a nonpregnant childless adult; or
- (iii) individuals described in both clauses (i) and (ii); and

(B) was in effect during fiscal year 2009.

**(2) Definitions****(A) Parent**

The term “parent” includes a caretaker relative (as such term is used in carrying out section 1396u-1 of this title) and a legal guardian.

**(B) Nonpregnant childless adult**

The term “nonpregnant childless adult” has the meaning given such term by section 1397gg(f) of this title.

(Aug. 14, 1935, ch. 531, title XXI, §2111, as added Pub. L. 111-3, title I, §112(a)(1), Feb. 4, 2009, 123 Stat. 29; amended Pub. L. 114-10, title III, §301(b)(2)(D), Apr. 16, 2015, 129 Stat. 157.)

## REFERENCES IN TEXT

Section 6102(c)(3) of the Deficit Reduction Act of 2005, referred to in subsec. (c)(1), is section 6102(c)(3) of Pub. L. 109-171, which is set out as a note under section 1397gg of this title.

## AMENDMENTS

2015—Subsec. (b)(2)(B)(i). Pub. L. 114-10 substituted “section 1397dd(m)(5)” for “section 1397dd(m)(4)”.

## EFFECTIVE DATE

Section 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 a note under section 1396 of this title.

**§ 1397II. Optional coverage of targeted low-income pregnant women through a State plan amendment****(a) In general**

Subject to the succeeding provisions of this section, a State may elect through an amendment to its State child health plan under section 1397bb of this title to provide pregnancy-related assistance under such plan for targeted low-income pregnant women.

**(b) Conditions**

A State may only elect the option under subsection (a) if the following conditions are satisfied:

**(1) Minimum income eligibility levels for pregnant women and children**

The State has established an income eligibility level—

(A) for pregnant women under subsection (a)(10)(A)(i)(III), (a)(10)(A)(i)(IV), or (I)(1)(A) of section 1396a of this title that is at least 185 percent (or such higher percent as the State has in effect with regard to pregnant women under this subchapter) of the poverty line applicable to a family of the size involved, but in no case lower than the percent in effect under any such subsection as of July 1, 2008; and

(B) for children under 19 years of age under this subchapter (or subchapter XIX) that is at least 200 percent of the poverty line applicable to a family of the size involved.

**(2) No CHIP income eligibility level for pregnant women lower than the State’s Medicaid level**

The State does not apply an effective income level for pregnant women under the State plan amendment that is lower than the effective income level (expressed as a percent of the poverty line and considering applicable income disregards) specified under subsection (a)(10)(A)(i)(III), (a)(10)(A)(i)(IV), or (I)(1)(A) of section 1396a of this title, on February 4, 2009, to be eligible for medical assistance as a pregnant woman.

**(3) No coverage for higher income pregnant women without covering lower income pregnant women**

The State does not provide coverage for pregnant women with higher family income without covering pregnant women with a lower family income.

**(4) Application of requirements for coverage of targeted low-income children**

The State provides pregnancy-related assistance for targeted low-income pregnant women in the same manner, and subject to the same requirements, as the State provides child health assistance for targeted low-income children under the State child health plan, and in addition to providing child health assistance for such women.

**(5) No preexisting condition exclusion or waiting period**

The State does not apply any exclusion of benefits for pregnancy-related assistance