

follows: “allow covered beneficiaries to elect a health care plan from eligible health care plans designated by the Secretary of Defense; or”.

Subsec. (c)(2). Pub. L. 114-328, § 701(j)(1)(E), added par. (2) and struck out former par. (2) which read as follows: “The Civilian Health and Medical Program of the Uniformed Services.”

#### EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114-328 applicable with respect to the provision of health care under the TRICARE program beginning on Jan. 1, 2018, see section 701(k) of Pub. L. 114-328, set out as a note under section 1072 of this title.

#### REGULATIONS

Pub. L. 99-661, div. A, title VII, § 701(d)(1), (2), Nov. 14, 1986, 100 Stat. 3898, provided that:

“(1) Except as provided in paragraph (2), the Secretary of Defense shall prescribe regulations as required by section 1099(d) of title 10, United States Code (as added by subsection (a)(1)) to implement the system of health care enrollment for covered beneficiaries—

“(A) on October 1, 1987, with respect to—

“(i) covered beneficiaries included in the demonstration project required under section 702 [10 U.S.C. 1073 note]; and

“(ii) facilities of the uniformed services located in the geographical area covered by the demonstration project; and

“(B) not later than September 30, 1990, for all other covered beneficiaries and facilities of the uniformed services.

“(2) The Secretary may not assign covered beneficiaries to facilities of the uniformed services, as authorized by section 1099(b)(2) of such title (as added by subsection (a)(1)), before October 1, 1990.”

#### INITIAL ANNUAL OPEN ENROLLMENT PERIOD

Pub. L. 114-328, div. A, title VII, § 701(d)(2), (3), Dec. 23, 2016, 130 Stat. 2186, provided that:

“(2) APPLICATION.—The Secretary of Defense shall implement the initial annual open enrollment period pursuant to section 1099(b)(1) of title 10, United States Code, as amended by paragraph (1), during 2018.

“(3) GRACE PERIOD DURING FIRST YEAR.—

“(A) At any time during the one-year period beginning on the date on which the initial annual open enrollment period begins pursuant to section 1099(b)(1) of title 10, United States Code, as amended by paragraph (1), a covered beneficiary may make an election, or modify such an election, described in such section.

“(B) If during such one-year period an individual who is eligible to enroll in the TRICARE program, but does not elect to enroll in such program, receives health care services for an episode of care that would be covered under the TRICARE program if such individual were enrolled in the TRICARE program, the Secretary—

“(i) shall pay the out-of-network fees only for the first episode of care and inform the individual of the opportunity to enroll in the TRICARE program; and

“(ii) may not pay any costs relating to any subsequent episode of care if such individual is not enrolled in the TRICARE program.”

#### REPORTS TO CONGRESS

Pub. L. 99-661, div. A, title VII, § 701(c)(1), Nov. 14, 1986, 100 Stat. 3898, required Secretary of Defense, not later than July 1, 1987, to submit to Congress a report detailing any plans to establish or implement a system of health care enrollment (other than as required under section 702(a)(2)(C)) under section 1099(a) of this title and the plan of the Secretary for completing implementation of such system.

### § 1100. Defense Health Program Account

(a) ESTABLISHMENT OF ACCOUNT.—(1) There is hereby established in the Department of Defense

an account to be known as the “Defense Health Program Account”. All sums appropriated to carry out the functions of the Secretary of Defense with respect to medical and health care programs of the Department of Defense shall be appropriated to the account.

(2) Of the total amount appropriated for a fiscal year for programs and activities carried out under this chapter, the amount equal to three percent of such total amount shall remain available for obligation until the end of the following fiscal year.

(b) OBLIGATION OF AMOUNTS FROM ACCOUNT BY SECRETARY OF DEFENSE.—The Secretary of Defense may obligate or expend funds from the account for purposes of conducting programs and activities under this chapter, including contracts entered into under section 1079, 1086, 1092, or 1097 of this title, to the extent amounts are available in the account.

(c) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(Added Pub. L. 99-661, div. A, title VII, § 701(a)(1), Nov. 14, 1986, 100 Stat. 3896; amended Pub. L. 104-106, div. A, title VII, § 735(a)-(d)(1), Feb. 10, 1996, 110 Stat. 382.)

#### AMENDMENTS

1996—Pub. L. 104-106, § 735(d)(1), amended section catchline generally, substituting “Defense Health Program Account” for “Military Health Care Account”.

Subsec. (a)(1). Pub. L. 104-106, § 735(a)(1), substituted “Defense Health Program Account” for “Military Health Care Account” and “medical and health care programs of the Department of Defense” for “the Civilian Health and Medical Program of the Uniformed Services”.

Subsec. (a)(2). Pub. L. 104-106, § 735(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Amounts appropriated to the account shall remain available until obligated or expended under subsection (b) or (c).”

Subsec. (b). Pub. L. 104-106, § 735(a)(2), substituted “conducting programs and activities under this chapter, including contracts entered into” for “entering into a contract” and inserted comma after “title”.

Subsec. (c). Pub. L. 104-106, § 735(c), redesignated subsec. (e) as (c) and struck out former subsec. (c) which read as follows: “ALLOCATION OF AMOUNTS IN ACCOUNT FOR PROVISION OF MEDICAL CARE BY SERVICE SECRETARIES.—(1) The Secretary of a military department shall, before the beginning of a fiscal year quarter, provide to the Secretary of Defense an estimate of the amounts necessary to pay for charges for benefits under the program for covered beneficiaries under the jurisdiction of the Secretary for that quarter.

“(2) The Secretary of Defense shall, subject to amounts provided in advance in appropriation Acts, make available to each Secretary of a military department the amount from the account that the Secretary of Defense determines is necessary to pay for charges for benefits under the program for covered beneficiaries under the jurisdiction of such Secretary for that quarter.”

Subsec. (d). Pub. L. 104-106, § 735(c)(1), struck out subsec. (d) which read as follows: “EXPENDITURE OF AMOUNTS FROM ACCOUNT BY SERVICE SECRETARIES.—The Secretary of a military department shall provide medical and dental care to covered beneficiaries under the jurisdiction of the Secretary for a fiscal year quarter from amounts appropriated to the Secretary and from amounts from the account made available for that quarter to the Secretary by the Secretary of Defense. If the Secretary of a military department exhausts the amounts from the account made available to the Sec-

retary for a fiscal year quarter, the Secretary shall transfer to the account from amounts appropriated to the Secretary an amount sufficient to provide medical and dental care to covered beneficiaries under the jurisdiction of the Secretary for the remainder of the fiscal year quarter."

Subsec. (e). Pub. L. 104-106, § 735(c)(2), redesignated subsec. (e) as (c).

Subsec. (f). Pub. L. 104-106, § 735(c)(1), struck out subsec. (f) which read as follows: "DEFINITIONS.—In this section:

"(1) The term 'account' means the Military Health Care Account established in subsection (a).

"(2) The term 'program' means the Civilian Health and Medical Program of the Uniformed Services."

#### EFFECTIVE DATE

Pub. L. 99-661, div. A, title VII, § 701(d)(3), Nov. 14, 1986, 100 Stat. 3898, provided that: "Section 1100 of such title (as added by subsection (a)(1)) shall take effect on October 1, 1987."

#### REPORTS TO CONGRESS

Pub. L. 99-661, div. A, title VII, § 701(c)(2), Nov. 14, 1986, 100 Stat. 3898, required Secretary to submit to Congress not later than May 1, 1987, a report on plans of Secretary for establishing diagnosis-related groups for inpatient services under section 1100(a) of this title, and not later than May 1, 1988, a report on plans of Secretary for establishing diagnosis-related groups for outpatient services under such section.

### § 1101. Resource allocation methods: capitation or diagnosis-related groups

(a) ESTABLISHMENT OF CAPITATION OR DRG METHOD.—The Secretary of Defense, after consultation with the other administering Secretaries, shall establish by regulation the use of capitation or diagnosis-related groups as the primary criteria for allocation of resources to facilities of the uniformed services.

(b) EXCEPTION FOR MOBILIZATION MISSIONS.—Capitation or diagnosis-related groups shall not be used to allocate resources to the facilities of the uniformed services to the extent that such resources are required by such facilities for mobilization missions.

(c) CONTENT OF REGULATIONS.—Such regulations may establish a system of diagnosis-related groups similar to the system established under section 1886(d)(4) of the Social Security Act (42 U.S.C. 1395ww(d)(4)). Such regulations may include the following:

(1) A classification of inpatient treatments by diagnosis-related groups and a similar classification of outpatient treatment.

(2) A methodology for classifying specific treatments within such groups.

(3) An appropriate weighting factor for each such diagnosis-related group which reflects the relative resources used by a facility of a uniformed service with respect to treatments classified within that group compared to treatments classified within other groups.

(4) An appropriate method for calculating or estimating the annual per capita costs of providing comprehensive health care services to members of the uniformed services on active duty and covered beneficiaries.

(Added Pub. L. 99-661, div. A, title VII, § 701(a)(1), Nov. 14, 1986, 100 Stat. 3897; amended Pub. L. 100-456, div. A, title XII, § 1233(e)(1), Sept. 29, 1988, 102 Stat. 2057; Pub. L. 103-160, div. A, title VII, § 714(a), (b)(1), Nov. 30, 1993, 107 Stat. 1690.)

#### AMENDMENTS

1993—Pub. L. 103-160, § 714(b)(1), substituted "Resource allocation methods: capitation or diagnosis-related groups" for "Diagnosis-related groups" as section catchline.

Subsec. (a). Pub. L. 103-160, § 714(a)(1), substituted "Capitation or DRG Method" for "DRGs" in heading and inserted "capitation or" before "diagnosis-related groups" in text.

Subsec. (b). Pub. L. 103-160, § 714(a)(2), substituted "Capitation or diagnosis-related groups" for "Diagnosis-related groups".

Subsec. (c). Pub. L. 103-160, § 714(a)(3), substituted "may" for "shall" in two places in introductory provisions and added par. (4).

1988—Subsec. (c). Pub. L. 100-456 struck out "(1)" before "Such regulations" in introductory provisions.

#### REGULATIONS

Pub. L. 101-189, div. A, title VII, § 724, Nov. 29, 1989, 103 Stat. 1478, as amended by Pub. L. 102-190, div. A, title VII, § 719, Dec. 5, 1991, 105 Stat. 1404, provided that: "The regulations required by section 1101(a) of title 10, United States Code, to establish the use of diagnosis-related groups as the primary criteria for the allocation of resources to health care facilities of the uniformed services shall be prescribed to take effect not later than October 1, 1993, in the case of outpatient treatments."

Pub. L. 99-661, div. A, title VII, § 701(d)(4), Nov. 14, 1986, 100 Stat. 3898, as amended by Pub. L. 100-180, div. A, title VII, § 724, Dec. 4, 1987, 101 Stat. 1116, provided that: "The Secretary of Defense shall prescribe regulations as required by section 1101(a) of such title (as added by subsection (a)(1)) to take effect—

"(A) in the case of inpatient treatments, not later than October 1, 1988; and

"(B) in the case of outpatient treatments, not later than October 1, 1989."

### § 1102. Confidentiality of medical quality assurance records: qualified immunity for participants

(a) CONFIDENTIALITY OF RECORDS.—Medical quality assurance records created by or for the Department of Defense as part of a medical quality assurance program are confidential and privileged. Such records may not be disclosed to any person or entity, except as provided in subsection (c).

(b) PROHIBITION ON DISCLOSURE AND TESTIMONY.—(1) No part of any medical quality assurance record described in subsection (a) may be subject to discovery or admitted into evidence in any judicial or administrative proceeding, except as provided in subsection (c).

(2) A person who reviews or creates medical quality assurance records for the Department of Defense or who participates in any proceeding that reviews or creates such records may not be permitted or required to testify in any judicial or administrative proceeding with respect to such records or with respect to any finding, recommendation, evaluation, opinion, or action taken by such person or body in connection with such records except as provided in this section.

(c) AUTHORIZED DISCLOSURE AND TESTIMONY.—(1) Subject to paragraph (2), a medical quality assurance record described in subsection (a) may be disclosed, and a person referred to in subsection (b) may give testimony in connection with such a record, only as follows:

(A) To a Federal executive agency or private organization, if such medical quality assur-