

Section 101(f) of this Act, referred to in subsec. (f), is section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. 106-170, which is set out as a note under section 1320b-19 of this title.

CODIFICATION

Section was enacted as part of the Ticket to Work and Work Incentives Improvement Act of 1999, and not as part of the Social Security Act which comprises this chapter.

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

**§ 1320b-23. Pharmacy benefit managers transparency requirements**

**(a) Provision of information**

A health benefits plan or any entity that provides pharmacy benefits management services on behalf of a health benefits plan (in this section referred to as a “PBM”) that manages prescription drug coverage under a contract with—

- (1) a PDP sponsor of a prescription drug plan or an MA organization offering an MA-PD plan under part D of subchapter XVIII; or
- (2) a qualified health benefits plan offered through an exchange established by a State under section 18031 of this title,

shall provide the information described in subsection (b) to the Secretary and, in the case of a PBM, to the plan with which the PBM is under contract with, at such times, and in such form and manner, as the Secretary shall specify.

**(b) Information described**

The information described in this subsection is the following with respect to services provided by a health benefits plan or PBM for a contract year:

- (1) The percentage of all prescriptions that were provided through retail pharmacies compared to mail order pharmacies, and the percentage of prescriptions for which a generic drug was available and dispensed (generic dispensing rate), by pharmacy type (which includes an independent pharmacy, chain pharmacy, supermarket pharmacy, or mass merchandiser pharmacy that is licensed as a pharmacy by the State and that dispenses medication to the general public), that is paid by the health benefits plan or PBM under the contract.
- (2) The aggregate amount, and the type of rebates, discounts, or price concessions (excluding bona fide service fees, which include but are not limited to distribution service fees, inventory management fees, product stocking allowances, and fees associated with administrative services agreements and patient care programs (such as medication compliance programs and patient education programs)) that the PBM negotiates that are attributable to patient utilization under the plan, and the aggregate amount of the rebates, discounts, or price concessions that are passed through to the plan sponsor, and the total number of prescriptions that were dispensed.

- (3) The aggregate amount of the difference between the amount the health benefits plan pays the PBM and the amount that the PBM pays retail pharmacies, and mail order pharmacies, and the total number of prescriptions that were dispensed.

**(c) Confidentiality**

Information disclosed by a health benefits plan or PBM under this section is confidential and shall not be disclosed by the Secretary or by a plan receiving the information, except that the Secretary may disclose the information in a form which does not disclose the identity of a specific PBM, plan, or prices charged for drugs, for the following purposes:

- (1) As the Secretary determines to be necessary to carry out this section or part D of subchapter XVIII.
- (2) To permit the Comptroller General to review the information provided.
- (3) To permit the Director of the Congressional Budget Office to review the information provided.
- (4) To States to carry out section 18031 of this title.

**(d) Penalties**

The provisions of subsection (b)(3)(C) of section 1396r-8 of this title shall apply to a health benefits plan or PBM that fails to provide information required under subsection (a) on a timely basis or that knowingly provides false information in the same manner as such provisions apply to a manufacturer with an agreement under that section.

(Aug. 14, 1935, ch. 531, title XI, §1150A, as added Pub. L. 111-148, title VI, §6005, Mar. 23, 2010, 124 Stat. 698.)

PRIOR PROVISIONS

A prior section 1320b-23 of this title, act Aug. 14, 1935, ch. 531, title XI, §1150A, as added Pub. L. 106-553, §1(a)(2) [title VI, §635(c)(1)], Dec. 21, 2000, 114 Stat. 2762, 2762A-115, which related to prohibition of certain misuses of social security numbers, was repealed by Pub. L. 106-554, §1(a)(4) [div. A, §213(a)(6), (b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-180, effective as if included in Pub. L. 106-553 on Dec. 21, 2000.

**§ 1320b-24. Consultation with Tribal Technical Advisory Group**

The Secretary of Health and Human Services shall maintain within the Centers for Medicaid & Medicare Services<sup>1</sup> (CMS) a Tribal Technical Advisory Group (TTAG), which was first established in accordance with requirements of the charter dated September 30, 2003, and the Secretary of Health and Human Services shall include in such Group a representative of a national urban Indian health organization and a representative of the Indian Health Service. The inclusion of a representative of a national urban Indian health organization in such Group shall not affect the nonapplication of the Federal Advisory Committee Act (5 U.S.C. App.) to such Group.

(Pub. L. 111-5, div. B, title V, §5006(e)(1), Feb. 17, 2009, 123 Stat. 510.)

<sup>1</sup> So in original. Probably should be “Centers for Medicare & Medicaid Services”.

## REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in text, is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

## CODIFICATION

Section was enacted as part of the American Recovery and Reinvestment Act of 2009, and not as part of the Social Security Act which comprises this chapter.

**§ 1320b-25. Reporting to law enforcement of crimes occurring in federally funded long-term care facilities**

**(a) Determination and notification**

**(1) Determination**

The owner or operator of each long-term care facility that receives Federal funds under this chapter shall annually determine whether the facility received at least \$10,000 in such Federal funds during the preceding year.

**(2) Notification**

If the owner or operator determines under paragraph (1) that the facility received at least \$10,000 in such Federal funds during the preceding year, such owner or operator shall annually notify each covered individual (as defined in paragraph (3)) of that individual's obligation to comply with the reporting requirements described in subsection (b).

**(3) Covered individual defined**

In this section, the term "covered individual" means each individual who is an owner, operator, employee, manager, agent, or contractor of a long-term care facility that is the subject of a determination described in paragraph (1).

**(b) Reporting requirements**

**(1) In general**

Each covered individual shall report to the Secretary and 1 or more law enforcement entities for the political subdivision in which the facility is located any reasonable suspicion of a crime (as defined by the law of the applicable political subdivision) against any individual who is a resident of, or is receiving care from, the facility.

**(2) Timing**

If the events that cause the suspicion—

(A) result in serious bodily injury, the individual shall report the suspicion immediately, but not later than 2 hours after forming the suspicion; and

(B) do not result in serious bodily injury, the individual shall report the suspicion not later than 24 hours after forming the suspicion.

**(c) Penalties**

**(1) In general**

If a covered individual violates subsection (b)—

(A) the covered individual shall be subject to a civil money penalty of not more than \$200,000; and

(B) the Secretary may make a determination in the same proceeding to exclude the

covered individual from participation in any Federal health care program (as defined in section 1320a-7b(f) of this title).

**(2) Increased harm**

If a covered individual violates subsection (b) and the violation exacerbates the harm to the victim of the crime or results in harm to another individual—

(A) the covered individual shall be subject to a civil money penalty of not more than \$300,000; and

(B) the Secretary may make a determination in the same proceeding to exclude the covered individual from participation in any Federal health care program (as defined in section 1320a-7b(f) of this title).

**(3) Excluded individual**

During any period for which a covered individual is classified as an excluded individual under paragraph (1)(B) or (2)(B), a long-term care facility that employs such individual shall be ineligible to receive Federal funds under this chapter.

**(4) Extenuating circumstances**

**(A) In general**

The Secretary may take into account the financial burden on providers with underserved populations in determining any penalty to be imposed under this subsection.

**(B) Underserved population defined**

In this paragraph, the term "underserved population" means the population of an area designated by the Secretary as an area with a shortage of elder justice programs or a population group designated by the Secretary as having a shortage of such programs. Such areas or groups designated by the Secretary may include—

(i) areas or groups that are geographically isolated (such as isolated in a rural area);

(ii) racial and ethnic minority populations; and

(iii) populations underserved because of special needs (such as language barriers, disabilities, alien status, or age).

**(d) Additional penalties for retaliation**

**(1) In general**

A long-term care facility may not—

(A) discharge, demote, suspend, threaten, harass, or deny a promotion or other employment-related benefit to an employee, or in any other manner discriminate against an employee in the terms and conditions of employment because of lawful acts done by the employee; or

(B) file a complaint or a report against a nurse or other employee with the appropriate State professional disciplinary agency because of lawful acts done by the nurse or employee,

for making a report, causing a report to be made, or for taking steps in furtherance of making a report pursuant to subsection (b)(1).

**(2) Penalties for retaliation**

If a long-term care facility violates subparagraph (A) or (B) of paragraph (1) the facility