

periods for which such individual is a recipient of aid, assistance, or benefits described in subsection (a).

(Aug. 14, 1935, ch. 531, title XI, §1133, as added Pub. L. 96-272, title III, §310(a)(1), June 17, 1980, 94 Stat. 532; amended Pub. L. 102-54, §13(q)(3)(B)(iii), June 13, 1991, 105 Stat. 279; Pub. L. 104-193, title I, §108(g)(6), Aug. 22, 1996, 110 Stat. 2168.)

#### REFERENCES IN TEXT

Section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978, referred to in subsec. (a)(1), is section 306 of Pub. L. 95-588, title III, Nov. 4, 1978, 92 Stat. 2508, which is set out as a note under section 1521 of Title 38, Veterans' Benefits.

#### AMENDMENTS

1996—Subsec. (a). Pub. L. 104-193 substituted “subchapter I, X, XIV, or XVI,” for “subchapter I, X, XIV, or XVI, or part A of subchapter IV.”

1991—Subsec. (a)(1). Pub. L. 102-54 substituted “Secretary of Veterans Affairs” for “Veterans Administration”.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104-193, as amended, set out as an Effective Date note under section 601 of this title.

#### EFFECTIVE DATE

Pub. L. 96-272, title III, §310(a)(2), June 17, 1980, 94 Stat. 532, provided that: “The amendment made by paragraph (1) [enacting this section] shall be effective on and after January 1, 1979; except that nothing contained in such amendment shall be construed to authorize or require any payment (or increase in payment) of any aid or assistance or benefits referred to in section 1133(a) of the Social Security Act [42 U.S.C. 1320b-3(a)] (as added by paragraph (1)) for any benefit period which begins prior to the date of enactment of this Act [June 17, 1980].”

#### CONTINUING MEDICAID ELIGIBILITY FOR CERTAIN RECIPIENTS OF VETERANS' ADMINISTRATION PENSIONS

Pub. L. 96-272, title III, §310(b)(2), June 17, 1980, 94 Stat. 533, provided that:

“(A) The Administrator shall provide to each individual to whom section 1133 of the Social Security Act (as added by subsection (a)(1) of this section) [42 U.S.C. 1320b-3] applies and who is eligible to make or has made an election under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [Pub. L. 95-588, set out as a note under section 1521 of Title 38, Veterans' Benefits], a written notice, in clear and understandable language, which (i) describes the consequences to such individual (and possibly to such individual's family), in terms of a determination or possible determination of ineligibility for medical assistance under a State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], of making an election with respect to pension under such section 306, (ii) describes the provisions of subparagraph (B) of this paragraph and subsection (a) of this section, (iii) sets forth other relevant information that would be helpful to such individual in making an informed decision concerning such an election or the disaffirmation thereof, and (iv) in the case of any individual who has made such an election, is accompanied by a form pre-

pared for the purpose of enabling such individual to file with the Administrator a written disaffirmation of such an election.

“(B) Notwithstanding any other provision of law—

“(i) any individual to whom section 1133 of the Social Security Act (as added by subsection (a)(1) of this section) [42 U.S.C. 1320b-3] applies may, within the 90-day period beginning with the day that there is mailed to such individual (at such individual's last known mailing address) a notice referred to in subparagraph (A), disaffirm an election previously made by such individual under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [Pub. L. 95-588, set out as a note under section 1521 of Title 38] by completing and mailing to the Administrator the form furnished such individual for such purpose by the Administrator pursuant to subparagraph (A),

“(ii) whenever any such individual files such a disaffirmation with the Administrator, the amount of pension payable to such individual shall be adjusted, beginning with the first calendar month which commences after the receipt by the Administrator of such disaffirmation, to the amount that such pension would have been if such an election by such individual had not been made,

“(iii) any individual who has filed a disaffirmation, pursuant to this subparagraph, of an election made by such individual under such section 306 may again make an election thereunder, but such subsequent election may not be disaffirmed under this subsection, and

“(iv) no indebtedness to the United States, as a result of the disaffirmation by an individual, pursuant to this subparagraph, of an election made by such individual under such section 306 shall be considered to arise from the payment of pension pursuant to such an election.

“(C) The Administrator shall promptly advise the Secretary of Health, Education, and Welfare [now Health and Human Services], and provide identification of the individuals involved and other pertinent information with respect to (i) disaffirmations of elections made by individuals pursuant to subparagraph (B), (ii) individuals who, by failing to disaffirm within the 90-day period prescribed in subparagraph (B), are deemed to have reaffirmed elections previously made, and (iii) individuals who, after having disaffirmed an election under subparagraph (B), subsequently again make an election under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [Pub. L. 95-588, set out as a note under section 1521 of Title 38]. The Secretary, upon receipt of any such information with respect to an individual, shall promptly notify the appropriate agencies administering State plans approved under title I, X, XIV, XIX, and part A of title IV of the Social Security Act [42 U.S.C. 301 et seq., 1201 et seq., 1351 et seq., 1396 et seq., 601 et seq.], and State agencies making supplemental payments pursuant to section 1616 of such Act [42 U.S.C. 1382e] or an agreement entered into pursuant to section 212(a) of Public Law 93-66 [set out as a note under section 1382 of this title].”

#### § 1320b-4. Nonprofit hospital or critical access hospital philanthropy

For purposes of determining, under subchapters XVIII and XIX of this chapter, the reasonable costs of services provided by nonprofit hospitals or critical access hospitals, the following items shall not be deducted from the operating costs of such hospitals or critical access hospitals:

(1) A grant, gift, or endowment, or income therefrom, which is to or for such a hospital and which has not been designated by the donor for paying any specific operating costs.

(2) A grant or similar payment which is to such a hospital, which was made by a govern-

mental entity, and which is not available under the terms of the grant or payment for use as operating funds.

(3) Those types of donor designated grants and gifts (including grants and similar payments which are made by a governmental entity), and income therefrom, which the Secretary determines, in the best interests of needed health care, should be encouraged.

(4) The proceeds from the sale or mortgage of any real estate or other capital asset of such a hospital, which real estate or asset the hospital acquired through gift or grant, if such proceeds are not available for use as operating funds under the terms of the gift or grant.

Paragraph (4) shall not apply to the recovery of the appropriate share of depreciation when gains or losses are realized from the disposal of depreciable assets.

(Aug. 14, 1935, ch. 531, title XI, §1134, as added Pub. L. 96-499, title IX, §901(a), Dec. 5, 1980, 94 Stat. 2611; amended Pub. L. 97-35, title XXI, §2193(c)(6), Aug. 13, 1981, 95 Stat. 827; Pub. L. 97-248, title I, §137(b)(5), Sept. 3, 1982, 96 Stat. 377; Pub. L. 101-239, title VI, §6003(g)(3)(D)(iii), Dec. 19, 1989, 103 Stat. 2153; Pub. L. 105-33, title IV, §4201(c)(1), Aug. 5, 1997, 111 Stat. 373.)

#### AMENDMENTS

1997—Pub. L. 105-33 substituted “critical access” for “rural primary care” in two places in introductory provisions.

1989—Pub. L. 101-239 substituted “hospitals or rural primary care hospitals” for “hospitals” in two places in introductory provisions.

1982—Par. (4). Pub. L. 97-248 substituted “sale” for “scale”.

1981—Pub. L. 97-35 substituted “subchapters XVIII and” for “subchapters V, XVIII, and” in provision preceding par. (1).

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105-33, set out as a note under section 1395f of this title.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, see section 137(d)(2) of Pub. L. 97-248, set out as a note under section 1396a of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to amendment by Pub. L. 97-35, see section 2194 of Pub. L. 97-35, set out as a note under section 701 of this title.

#### EFFECTIVE DATE

Pub. L. 96-499, title IX, §901(b), Dec. 5, 1980, 94 Stat. 2611, provided that: “The amendment made by subsection (a) [enacting this section] shall apply to grants, gifts, and endowments, and income therefrom, made or established after the date of the enactment of this Act [Dec. 5, 1980].”

### § 1320b-5. Authority to waive requirements during national emergencies

#### (a) Purpose

The purpose of this section is to enable the Secretary to ensure to the maximum extent fea-

sible, in any emergency area and during an emergency period (as defined in subsection (g)(1))—

(1) that sufficient health care items and services are available to meet the needs of individuals in such area enrolled in the programs under subchapters XVIII, XIX, and XXI; and

(2) that health care providers (as defined in subsection (g)(2)) that furnish such items and services in good faith, but that are unable to comply with one or more requirements described in subsection (b), may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse.

#### (b) Secretarial authority

To the extent necessary to accomplish the purpose specified in subsection (a), the Secretary is authorized, subject to the provisions of this section, to temporarily waive or modify the application of, with respect to health care items and services furnished by a health care provider (or classes of health care providers) in any emergency area (or portion of such an area) during any portion of an emergency period, the requirements of subchapters XVIII, XIX, or XXI, or any regulation thereunder (and the requirements of this subchapter other than this section, and regulations thereunder, insofar as they relate to such subchapters), pertaining to—

(1)(A) conditions of participation or other certification requirements for an individual health care provider or types of providers,

(B) program participation and similar requirements for an individual health care provider or types of providers, and

(C) pre-approval requirements;

(2) requirements that physicians and other health care professionals be licensed in the State in which they provide such services, if they have equivalent licensing in another State and are not affirmatively excluded from practice in that State or in any State a part of which is included in the emergency area;

(3) actions under section 1395dd of this title (relating to examination and treatment for emergency medical conditions and women in labor) for—

(A) a transfer of an individual who has not been stabilized in violation of subsection (c) of such section if the transfer is necessitated by the circumstances of the declared emergency in the emergency area during the emergency period; or

(B) the direction or relocation of an individual to receive medical screening in an alternative location—

(i) pursuant to an appropriate State emergency preparedness plan; or

(ii) in the case of a public health emergency described in subsection (g)(1)(B) that involves a pandemic infectious disease, pursuant to a State pandemic preparedness plan or a plan referred to in clause (i), whichever is applicable in the State;

(4) sanctions under section 1395nn(g) of this title (relating to limitations on physician referral);

(5) deadlines and timetables for performance of required activities, except that such dead-