

visions of this section shall be retained by the State as is necessary to reimburse it for medical assistance payments made on behalf of an individual with respect to whom such assignment was executed (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing of such medical assistance), and the remainder of such amount collected shall be paid to such individual.

(Aug. 14, 1935, ch. 531, title XIX, §1912, as added Pub. L. 95-142, §11(b), Oct. 25, 1977, 91 Stat. 1196; amended Pub. L. 98-369, div. B, title III, §2367(b), July 18, 1984, 98 Stat. 1109; Pub. L. 99-272, title IX, §9503(e), Apr. 7, 1986, 100 Stat. 207; Pub. L. 101-508, title IV, §4606(a), Nov. 5, 1990, 104 Stat. 1388-170; Pub. L. 113-67, div. A, title II, §202(b)(2), Dec. 26, 2013, 127 Stat. 1177; Pub. L. 115-123, div. E, title XII, §53102(b)(1), Feb. 9, 2018, 132 Stat. 298.)

#### AMENDMENTS

2018—Subsec. (a)(1)(A). Pub. L. 115-123, §53102(b)(1), repealed Pub. L. 113-67, §202(b)(2), and provided that the provisions amended by section 202(b) shall be applied and administered as if such amendment had never been enacted. See 2013 Amendment note below.

2013—Subsec. (a)(1)(A). Pub. L. 113-67, §202(b)(2), which directed substitution of “any payment from a third party that has a legal liability to pay for care and services available under the plan” for “payment for medical care from any third party”, was repealed by Pub. L. 115-123, §53102(b)(1).

1990—Subsec. (a)(1)(B). Pub. L. 101-508 inserted “the individual is described in section 1396a(l)(1)(A) of this title or” after “unless (in either case)”.

1986—Subsec. (a)(1)(C). Pub. L. 99-272 added subpar. (C).

1984—Subsec. (a). Pub. L. 98-369 substituted “State plan for medical assistance shall” for “State plan for medical assistance may”.

#### EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115-123, div. E, title XII, §53102(b)(1), Feb. 9, 2018, 132 Stat. 298, provided that the repeal of section 202(b) of Pub. L. 113-67 is effective Sept. 30, 2017, and the provisions amended by section 202(b) shall be applied and administered as if such amendments had never been enacted. In addition, such repeal by section 53102(b)(1) of Pub. L. 115-123 applicable with respect to any open claims, including claims pending, generated, or filed, after Sept. 30, 2017, see section 53102(b)(3) of Pub. L. 115-123, set out as a note under section 1396a of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title IV, §4606(b), Nov. 5, 1990, 104 Stat. 1388-170, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].”

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 applicable to calendar quarters beginning on or after Apr. 7, 1986, except as otherwise provided, see section 9503(g)(1), (2) of Pub. L. 99-272, set out as a note under section 1396a of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective Oct. 1, 1984, except as otherwise provided, see section 2367(c) of Pub. L. 98-369, set out as a note under section 1396a of this title.

### § 1396l. Hospital providers of nursing facility services

(a) Notwithstanding any other provision of this subchapter, payment may be made, in ac-

cordance with this section, under a State plan approved under this subchapter for nursing facility services furnished by a hospital which has in effect an agreement under section 1395tt of this title and which, with respect to the provision of such services, meets the requirements of subsections (b) through (d) of section 1396r of this title.

(b)(1) Except as provided in paragraph (3), payment to any such hospital, for any nursing facility services furnished pursuant to subsection (a), shall be at a rate equal to the average rate per patient-day paid for routine services during the previous calendar year under the State plan to nursing facilities, respectively,<sup>1</sup> located in the State in which the hospital is located. The reasonable cost of ancillary services shall be determined in the same manner as the reasonable cost of ancillary services provided for inpatient hospital services.

(2) With respect to any period for which a hospital has an agreement under section 1395tt of this title, in order to allocate routine costs between hospital and long-term care services, the total reimbursement for routine services due from all classes of long-term care patients (including subchapter XVIII, this subchapter, and private pay patients) shall be subtracted from the hospital total routine costs before calculations are made to determine reimbursement for routine hospital services under the State plan.

(3) Payment to all such hospitals, for any nursing facility services furnished pursuant to subsection (a), may be made at a payment rate established by the State in accordance with the requirements of section 1396a(a)(13)(A) of this title.

(Aug. 14, 1935, ch. 531, title XIX, §1913, as added Pub. L. 96-499, title IX, §904(b), Dec. 5, 1980, 94 Stat. 2617; amended Pub. L. 98-369, div. B, title III, §2369(a), July 18, 1984, 98 Stat. 1110; Pub. L. 100-203, title IV, §4211(h)(9), Dec. 22, 1987, 101 Stat. 1330-206.)

#### AMENDMENTS

1987—Pub. L. 100-203, §4211(h)(9)(A), substituted “nursing facility services” for “skilled nursing and intermediate care services” in section catchline.

Subsec. (a). Pub. L. 100-203, §4211(h)(9)(B), substituted “nursing facility services” for “skilled nursing facility services and intermediate care facility services” and inserted “and which, with respect to the provision of such services, meets the requirements of subsections (b) through (d) of section 1396r of this title” before period at end.

Subsec. (b)(1). Pub. L. 100-203, §4211(h)(9)(C), substituted “nursing facility services” for “skilled nursing or intermediate care facility services” and “nursing facilities” for “skilled nursing and intermediate care facilities”.

Subsec. (b)(3). Pub. L. 100-203, §4211(h)(9)(D), substituted “nursing facility services” for “skilled nursing or intermediate care facility services”.

1984—Subsec. (b)(1). Pub. L. 98-369, §2369(a)(1), substituted “Except as provided in paragraph (3), payment” for “Payment”.

Subsec. (b)(3). Pub. L. 98-369, §2369(a)(2), added par. (3).

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to nursing facility services furnished on or after Oct. 1, 1990, with-

<sup>1</sup> So in original, “, respectively,” probably should not appear.

out regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100-203, as amended, set out as an Effective Date note under section 1396r of this title.

**EFFECTIVE DATE OF 1984 AMENDMENT**

Pub. L. 98-369, div. B, title III, §2369(b), July 18, 1984, 98 Stat. 1110, provided that: "The amendments made by this section [amending this section] shall apply to payments for services furnished after the date of the enactment of this Act [July 18, 1984]."

**EFFECTIVE DATE**

Section effective on date on which final regulations to implement the section are first issued, see section 904(d) of Pub. L. 96-499, set out as an Effective Date note under section 1395tt of this title.

**§ 1396m. Withholding of Federal share of payments for certain medicare providers**

**(a) Adjustment of Federal matching payments**

The Secretary may adjust, in accordance with this section, the Federal matching payment to a State with respect to expenditures for medical assistance for care or services furnished in any quarter by—

(1) an institution (A) which has or previously had in effect an agreement with the Secretary under section 1395cc of this title; and (B)(i) from which the Secretary has been unable to recover overpayments made under subchapter XVIII, or (ii) from which the Secretary has been unable to collect the information necessary to enable him to determine the amount (if any) of the overpayments made to such institution under subchapter XVIII; and

(2) any person (A) who (i) has previously accepted payment on the basis of an assignment under section 1395u(b)(3)(B)(ii) of this title, and (ii) during the annual period immediately preceding such quarter submitted no claims for payment under subchapter XVIII, or submitted claims for payment under subchapter XVIII which aggregated less than the amount of overpayments made to him, and (B)(i) from whom the Secretary has been unable to recover overpayments received in violation of the terms of such assignment, or (ii) from whom the Secretary has been unable to collect the information necessary to enable him to determine the amount (if any) of the overpayments made to such person under subchapter XVIII.

**(b) Reductions in payments to and by States**

The Secretary may (subject to the remaining provisions of this section) reduce payment to a State under this subchapter for any quarter by an amount equal to the lesser of the Federal matching share of payments to any institution or person specified in subsection (a), or the total overpayments to such institution or person under subchapter XVIII, and may require the State to reduce its payment to such institution or person by such amount.

**(c) Notice**

The Secretary shall not make any adjustment in the payment to a State, nor require any adjustment in the payment to an institution or person, pursuant to subsection (b) until after he

has provided adequate notice (which shall be not less than 60 days) to the State agency and the institution or person.

**(d) Regulations**

The Secretary shall by regulation provide procedures for implementation of this section, which procedures shall (1) determine the amount of the Federal payment to which the institution or person would otherwise be entitled under this section which shall be treated as a setoff against overpayments under subchapter XVIII, and (2) assure the restoration to the institution or person of amounts withheld under this section which are ultimately determined to be in excess of overpayments under subchapter XVIII and to which the institution or person would otherwise be entitled under this subchapter.

**(e) Restoration to trust funds of recovered amounts**

The Secretary shall restore to the trust funds established under sections 1395i and 1395t of this title, as appropriate, amounts recovered under this section as setoffs against overpayments under subchapter XVIII.

**(f) Liability of States for withheld payments**

Notwithstanding any other provision of this subchapter, an institution or person shall not be entitled to recover from any State any amount in payment for medical care and services under this subchapter which is withheld by the State agency pursuant to an order by the Secretary under subsection (b).

(Aug. 14, 1935, ch. 531, title XIX, §1914, as added Pub. L. 96-499, title IX, §905(d), Dec. 5, 1980, 94 Stat. 2618.)

**§ 1396n. Compliance with State plan and payment provisions**

**(a) Activities deemed as compliance**

A State shall not be deemed to be out of compliance with the requirements of paragraphs (1), (10), or (23) of section 1396a(a) of this title solely by reason of the fact that the State (or any political subdivision thereof)—

(1) has entered into—

(A) a contract with an organization which has agreed to provide care and services in addition to those offered under the State plan to individuals eligible for medical assistance who reside in the geographic area served by such organization and who elect to obtain such care and services from such organization, or by reason of the fact that the plan provides for payment for rural health clinic services only if those services are provided by a rural health clinic; or

(B) arrangements through a competitive bidding process or otherwise for the purchase of laboratory services referred to in section 1396d(a)(3) of this title or medical devices if the Secretary has found that—

(i) adequate services or devices will be available under such arrangements, and

(ii) any such laboratory services will be provided only through laboratories—

(I) which meet the applicable requirements of section 1395x(e)(9) of this title or paragraphs (16) and (17) of section