

Subsec. (e)(1)(K). Pub. L. 111-5, § 5006(e)(2)(B)(i), redesignated subpar. (J) as (K). Former subpar. (K) redesignated (L).

Pub. L. 111-5, § 5006(d)(2)(A), redesignated subpar. (J) as (K).

Subsec. (e)(1)(L). Pub. L. 111-5, § 5006(e)(2)(B)(i), redesignated subpar. (K) as (L).

Subsec. (f). Pub. L. 111-3, § 112(a)(2)(A)(i), substituted “section 1315(a) of this title:” for “section 1315(a) of this title, the Secretary” and inserted par. (1) designation and “The Secretary” before “may not approve a waiver.”

Subsec. (f)(1). Pub. L. 111-3, § 112(a)(2)(A)(ii), (iii), inserted “or a parent (as defined in section 1397kk(c)(2)(A) of this title), who is not pregnant, of a targeted low-income child” after “nonpregnant childless adult” and struck out last sentence which read as follows: “For purposes of the preceding sentence, a caretaker relative (as such term is defined for purposes of carrying out section 1396u-1 of this title) shall not be considered a childless adult.”

Subsec. (f)(2). Pub. L. 111-3, § 112(a)(2)(A)(iv), added par. (2).

2006—Subsec. (f). Pub. L. 109-171 added subsec. (f).

2000—Subsec. (e)(1)(D). Pub. L. 106-554 added subpar. (D).

#### EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-5 effective July 1, 2009, see section 5006(f) of Pub. L. 111-5, set out as a note under section 1396a of this title.

Except as otherwise provided, 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, see section 3 of Pub. L. 111-3, set out as a note under section 1396 of this title.

Amendment by section 203(a)(2), (d)(2) of Pub. L. 111-3 effective Feb. 4, 2009, see section 203(f) of Pub. L. 111-3, set out as a note under section 1396a of this title.

Amendment by section 501(d)(2) of Pub. L. 111-3 effective Jan. 1, 2009, see section 501(d)(3) of Pub. L. 111-3, set out as a note under section 1396a of this title.

Pub. L. 111-3, title V, § 503(a)(2), Feb. 4, 2009, 123 Stat. 89, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to services provided on or after October 1, 2009.”

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-171, title VI, § 6102(d), Feb. 8, 2006, 120 Stat. 132, provided that: “This section [amending this section and section 1397ee of this title and enacting provisions set out as a note below] and the amendments made by this section shall take effect as if enacted on October 1, 2005, and shall apply to any waiver, experimental, pilot, or demonstration project that is approved on or after that date.”

#### CONSTRUCTION OF 2016 AMENDMENT

Nothing in amendment by Pub. L. 114-255 to be construed as changing or limiting the appeal rights of providers or the process for appeals of States under the Social Security Act, see section 5005(d) of Pub. L. 114-255, set out as a note under section 1396a of this title.

#### CONSTRUCTION OF 2006 AMENDMENT

Pub. L. 109-171, title VI, § 6102(c), Feb. 8, 2006, 120 Stat. 131, as amended by Pub. L. 111-3, title I, § 112(a)(2)(B), Feb. 4, 2009, 123 Stat. 33, provided that: “Subject to section 2111 of the Social Security Act [42 U.S.C. 1397kk], as added by section 112 of the Children’s Health Insurance Program Reauthorization Act of 2009 [Pub. L. 111-3], nothing in this section [amending this section and section 1397ee of this title and enacting provisions set out as a note above] or the amendments made by this section shall be construed to—

“(1) authorize the waiver of any provision of title XIX or XXI of the Social Security Act (42 U.S.C. 1396 et seq., 1397aa et seq.) that is not otherwise authorized to be waived under such titles or under title XI

of such Act (42 U.S.C. 1301 et seq.) as of the date of enactment of this Act [Feb. 8, 2006];

“(2) imply congressional approval of any waiver, experimental, pilot, or demonstration project affecting funds made available under the State children’s health insurance program under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.) or any amendment to such a waiver or project that has been approved as of such date of enactment; or

“(3) apply to any waiver, experimental, pilot, or demonstration project that would allow funds made available under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.) to be used to provide child health assistance or other health benefits coverage to a nonpregnant childless adult that is approved before the date of enactment of this Act or to any extension, renewal, or amendment of such a waiver or project that is approved on or after such date of enactment.”

### § 1397hh. Annual reports; evaluations

#### (a) Annual report

Subject to subsection (e), the State shall—

(1) assess the operation of the State plan under this subchapter in each fiscal year, including the progress made in reducing the number of uncovered low-income children; and

(2) report to the Secretary, by January 1 following the end of the fiscal year, on the result of the assessment.

#### (b) State evaluations

##### (1) In general

By March 31, 2000, each State that has a State child health plan shall submit to the Secretary an evaluation that includes each of the following:

(A) An assessment of the effectiveness of the State plan in increasing the number of children with creditable health coverage.

(B) A description and analysis of the effectiveness of elements of the State plan, including—

(i) the characteristics of the children and families assisted under the State plan including age of the children, family income, and the assisted child’s access to or coverage by other health insurance prior to the State plan and after eligibility for the State plan ends,

(ii) the quality of health coverage provided including the types of benefits provided,

(iii) the amount and level (including payment of part or all of any premium) of assistance provided by the State,

(iv) the service area of the State plan,

(v) the time limits for coverage of a child under the State plan,

(vi) the State’s choice of health benefits coverage and other methods used for providing child health assistance, and

(vii) the sources of non-Federal funding used in the State plan.

(C) An assessment of the effectiveness of other public and private programs in the State in increasing the availability of affordable quality individual and family health insurance for children.

(D) A review and assessment of State activities to coordinate the plan under this subchapter with other public and private programs providing health care and health

care financing, including medicaid and maternal and child health services.

(E) An analysis of changes and trends in the State that affect the provision of accessible, affordable, quality health insurance and health care to children.

(F) A description of any plans the State has for improving the availability of health insurance and health care for children.

(G) Recommendations for improving the program under this subchapter.

(H) Any other matters the State and the Secretary consider appropriate.

**(2) Report of the Secretary**

The Secretary shall submit to Congress and make available to the public by December 31, 2001, a report based on the evaluations submitted by States under paragraph (1), containing any conclusions and recommendations the Secretary considers appropriate.

**(c) Federal evaluation**

**(1) In general**

The Secretary, directly or through contracts or interagency agreements, shall conduct an independent evaluation of 10 States with approved child health plans.

**(2) Selection of States**

In selecting States for the evaluation conducted under this subsection, the Secretary shall choose 10 States that utilize diverse approaches to providing child health assistance, represent various geographic areas (including a mix of rural and urban areas), and contain a significant portion of uncovered children.

**(3) Matters included**

In addition to the elements described in subsection (b)(1), the evaluation conducted under this subsection shall include each of the following:

(A) Surveys of the target population (enrollees, disenrollees, and individuals eligible for but not enrolled in the program under this subchapter).

(B) Evaluation of effective and ineffective outreach and enrollment practices with respect to children (for both the program under this subchapter and the medicaid program under subchapter XIX), and identification of enrollment barriers and key elements of effective outreach and enrollment practices, including practices (such as through community health workers and others) that have successfully enrolled hard-to-reach populations such as children who are eligible for medical assistance under subchapter XIX but have not been enrolled previously in the medicaid program under that subchapter.

(C) Evaluation of the extent to which State medicaid eligibility practices and procedures under the medicaid program under subchapter XIX are a barrier to the enrollment of children under that program, and the extent to which coordination (or lack of coordination) between that program and the program under this subchapter affects the enrollment of children under both programs.

(D) An assessment of the effect of cost-sharing on utilization, enrollment, and coverage retention.

(E) Evaluation of disenrollment or other retention issues, such as switching to private coverage, failure to pay premiums, or barriers in the recertification process.

**(4) Submission to Congress**

Not later than December 31, 2001, the Secretary shall submit to Congress the results of the evaluation conducted under this subsection.

**(5) Subsequent evaluation using updated information**

**(A) In general**

The Secretary, directly or through contracts or interagency agreements, shall conduct an independent subsequent evaluation of 10 States with approved child health plans.

**(B) Selection of States and matters included**

Paragraphs (2) and (3) shall apply to such subsequent evaluation in the same manner as such provisions apply to the evaluation conducted under paragraph (1).

**(C) Submission to Congress**

Not later than December 31, 2011, the Secretary shall submit to Congress the results of the evaluation conducted under this paragraph.

**(D) Funding**

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated \$10,000,000 for fiscal year 2010 for the purpose of conducting the evaluation authorized under this paragraph. Amounts appropriated under this subparagraph shall remain available for expenditure through fiscal year 2012.

**(d) Access to records for IG and GAO audits and evaluations**

For the purpose of evaluating and auditing the program established under this subchapter, or subchapter XIX, the Secretary, the Office of Inspector General, and the Comptroller General shall have access to any books, accounts, records, correspondence, and other documents that are related to the expenditure of Federal funds under this subchapter and that are in the possession, custody, or control of States receiving Federal funds under this subchapter or political subdivisions thereof, or any grantee or contractor of such States or political subdivisions.

**(e)<sup>1</sup> Information required for inclusion in State annual report**

The State shall include the following information in the annual report required under subsection (a):

(1) Eligibility criteria, enrollment, and retention data (including data with respect to continuity of coverage or duration of benefits).

(2) Data regarding the extent to which the State uses process measures with respect to determining the eligibility of children under the State child health plan, including measures such as 12-month continuous eligibility,

<sup>1</sup> So in original. Two subsecs. (e) have been enacted.

self-declaration of income for applications or renewals, or presumptive eligibility.

(3) Data regarding denials of eligibility and redeterminations of eligibility.

(4) Data regarding access to primary and specialty services, access to networks of care, and care coordination provided under the State child health plan, using quality care and consumer satisfaction measures included in the Consumer Assessment of Healthcare Providers and Systems (CAHPS) survey.

(5) If the State provides child health assistance in the form of premium assistance for the purchase of coverage under a group health plan, data regarding the provision of such assistance, including the extent to which employer-sponsored health insurance coverage is available for children eligible for child health assistance under the State child health plan, the range of the monthly amount of such assistance provided on behalf of a child or family, the number of children or families provided such assistance on a monthly basis, the income of the children or families provided such assistance, the benefits and cost-sharing protection provided under the State child health plan to supplement the coverage purchased with such premium assistance, the effective strategies the State engages in to reduce any administrative barriers to the provision of such assistance, and,<sup>2</sup> the effects, if any, of the provision of such assistance on preventing the coverage provided under the State child health plan from substituting for coverage provided under employer-sponsored health insurance offered in the State.

(6) To the extent applicable, a description of any State activities that are designed to reduce the number of uncovered children in the State, including through a State health insurance connector program or support for innovative private health coverage initiatives.

(7) Data collected and reported in accordance with section 300kk of this title, with respect to individuals enrolled in the State child health plan (and, in the case of enrollees under 19 years of age, their parents or legal guardians), including data regarding the primary language of such individuals, parents, and legal guardians.

**(e)<sup>1</sup> Information on dental care for children**

**(1) In general**

Each annual report under subsection (a) shall include the following information with respect to care and services described in section 1396d(r)(3) of this title provided to targeted low-income children enrolled in the State child health plan under this subchapter at any time during the year involved:

(A) The number of enrolled children by age grouping used for reporting purposes under section 1396a(a)(43) of this title.

(B) For children within each such age grouping, information of the type contained in questions 12(a)–(c) of CMS Form 416 (that consists of the number of enrolled targeted low income children who receive any,<sup>2</sup> preventive, or restorative dental care under the State plan).

(C) For the age grouping that includes children 8 years of age, the number of such children who have received a protective sealant on at least one permanent molar tooth.

**(2) Inclusion of information on enrollees in managed care plans**

The information under paragraph (1) shall include information on children who are enrolled in managed care plans and other private health plans and contracts with such plans under this subchapter shall provide for the reporting of such information by such plans to the State.

(Aug. 14, 1935, ch. 531, title XXI, § 2108, as added Pub. L. 105–33, title IV, § 4901(a), Aug. 5, 1997, 111 Stat. 566; amended Pub. L. 106–113, div. B, § 1000(a)(6) [title VII, § 703(b), (c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–401; Pub. L. 111–3, title II, § 201(b)(2)(B)(ii), title IV, § 402(a), title V, § 501(e)(2), title VI, §§ 603, 604, Feb. 4, 2009, 123 Stat. 39, 82, 87, 99; Pub. L. 111–8, div. G, title I, § 1301(e), Mar. 11, 2009, 123 Stat. 829; Pub. L. 111–148, title IV, § 4302(b)(1)(B), Mar. 23, 2010, 124 Stat. 581.)

AMENDMENTS

2010—Subsec. (e)(7). Pub. L. 111–148, which directed amendment of subsec. (e) by adding par. (7) at end, was executed to the subsec. (e) added by Pub. L. 111–3, § 402(a)(2), relating to information required for inclusion in State annual report, to reflect the probable intent of Congress.

2009—Subsec. (a). Pub. L. 111–3, § 402(a)(1), substituted “Subject to subsection (e), the State” for “The State” in introductory provisions.

Subsec. (c)(3)(B). Pub. L. 111–3, § 201(b)(2)(B)(ii), inserted “(such as through community health workers and others)” after “including practices”.

Subsec. (c)(5). Pub. L. 111–3, § 603, added par. (5) and struck out former par. (5). Prior to amendment, text read as follows: “Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated \$10,000,000 for fiscal year 2000 for the purpose of conducting the evaluation authorized under this subsection. Amounts appropriated under this paragraph shall remain available for expenditure through fiscal year 2002.”

Subsec. (d). Pub. L. 111–8 struck out “and GAO report” after “Inspector General audit” in heading and struck out par. (3) which related to duty of Comptroller General to monitor Inspector General audits and report to Congress on audit results.

Pub. L. 111–3, § 604, amended subsec. (d) generally. Prior to amendment, subsec. related to Inspector General audits of certain States.

Subsec. (e). Pub. L. 111–3, § 501(e)(2), added subsec. (e) relating to information on dental care for children.

Pub. L. 111–3, § 402(a)(2), added subsec. (e) relating to information required for inclusion in State annual report.

1999—Subsecs. (c), (d). Pub. L. 106–113 added subsecs. (c) and (d).

EFFECTIVE DATE OF 2009 AMENDMENT

Except as otherwise provided, 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, see section 3 of Pub. L. 111–3, set out as an Effective Date note under section 1396 of this title.

Amendment by section 501(e)(2) of Pub. L. 111–3 effective for annual reports submitted for years beginning after Feb. 4, 2009, see section 501(e)(3) of Pub. L. 111–3, set out as a note under section 1396a of this title.

STANDARDIZED REPORTING FORMAT

Pub. L. 111–3, title IV, § 402(b), Feb. 4, 2009, 123 Stat. 83, provided that:

<sup>2</sup>So in original. The comma probably should not appear.

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [Feb. 4, 2009], the Secretary [of Health and Human Services] shall specify a standardized format for States to use for reporting the information required under section 2108(e) of the Social Security Act [42 U.S.C. 1397hh(e)], as added by subsection (a)(2).”

“(2) TRANSITION PERIOD FOR STATES.—Each State that is required to submit a report under subsection (a) of section 2108 of the Social Security Act [42 U.S.C. 1397hh(a)] that includes the information required under subsection (e) of such section may use up to 3 reporting periods to transition to the reporting of such information in accordance with the standardized format specified by the Secretary under paragraph (1).”

### § 1397ii. Miscellaneous provisions

#### (a) Relation to other laws

##### (1) HIPAA

Health benefits coverage provided under section 1397aa(a)(1) of this title (and coverage provided under a waiver under section 1397ee(c)(2)(B) of this title) shall be treated as creditable coverage for purposes of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1181 et seq.], title XXVII of the Public Health Service Act [42 U.S.C. 300gg et seq.], and subtitle K of the Internal Revenue Code of 1986.

##### (2) ERISA

Nothing in this subchapter shall be construed as affecting or modifying section 514 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144) with respect to a group health plan (as defined in section 2791(a)(1) of the Public Health Service Act (42 U.S.C. 300gg-91(a)(1))).

#### (b) Adjustment to Current Population Survey to include State-by-State data relating to children without health insurance coverage

##### (1) In general

The Secretary of Commerce shall make appropriate adjustments to the annual Current Population Survey conducted by the Bureau of the Census in order to produce statistically reliable annual State data on the number of low-income children who do not have health insurance coverage, so that real changes in the uninsurance rates of children can reasonably be detected. The Current Population Survey should produce data under this subsection that categorizes such children by family income, age, and race or ethnicity. The adjustments made to produce such data shall include, where appropriate, expanding the sample size used in the State sampling units, expanding the number of sampling units in a State, and an appropriate verification element.

##### (2) Additional requirements

In addition to making the adjustments required to produce the data described in paragraph (1), with respect to data collection occurring for fiscal years beginning with fiscal year 2009, in appropriate consultation with the Secretary of Health and Human Services, the Secretary of Commerce shall do the following:

(A) Make appropriate adjustments to the Current Population Survey to develop more accurate State-specific estimates of the

number of children enrolled in health coverage under subchapter XIX or this subchapter.

(B) Make appropriate adjustments to the Current Population Survey to improve the survey estimates used to determine a high-performing State under section 1397kk(b)(3)(B) of this title and any other data necessary for carrying out this subchapter.

(C) Include health insurance survey information in the American Community Survey related to children.

(D) Assess whether American Community Survey estimates, once such survey data are first available, produce more reliable estimates than the Current Population Survey with respect to the purposes described in subparagraph (B).

(E) On the basis of the assessment required under subparagraph (D), recommend to the Secretary of Health and Human Services whether American Community Survey estimates should be used in lieu of, or in some combination with, Current Population Survey estimates for the purposes described in subparagraph (B).

(F) Continue making the adjustments described in the last sentence of paragraph (1) with respect to expansion of the sample size used in State sampling units, the number of sampling units in a State, and using an appropriate verification element.

#### (3) Authority for the Secretary of Health and Human Services to transition to the use of all, or some combination of, ACS estimates upon recommendation of the Secretary of Commerce

If, on the basis of the assessment required under paragraph (2)(D), the Secretary of Commerce recommends to the Secretary of Health and Human Services that American Community Survey estimates should be used in lieu of, or in some combination with, Current Population Survey estimates for the purposes described in paragraph (2)(B), the Secretary of Health and Human Services, in consultation with the States, may provide for a period during which the Secretary may transition from carrying out such purposes through the use of Current Population Survey estimates to the use of American Community Survey estimates (in lieu of, or in combination with the Current Population Survey estimates, as recommended), provided that any such transition is implemented in a manner that is designed to avoid adverse impacts upon States with approved State child health plans under this subchapter.

#### (4) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated \$20,000,000 for fiscal year 2009 and each fiscal year thereafter for the purpose of carrying out this subsection (except that only with respect to fiscal year 2008, there are appropriated \$20,000,000 for the purpose of carrying out this subsection, to remain available until expended).

(Aug. 14, 1935, ch. 531, title XXI, § 2109, as added Pub. L. 105-33, title IV, § 4901(a), Aug. 5, 1997, 111