

XVIII and XIX” for “subchapters V, XVIII, and XIX” in two places.

Subsec. (d)(2). Pub. L. 97-35, §2193(c)(3)(B), as amended by Pub. L. 97-248, §137(a)(5), substituted “subchapter XVIII or XIX” for “subchapter V, XVIII, or XIX”.

Subsec. (e). Pub. L. 97-35, §2193(c)(3)(A), substituted “subchapters XVIII and XIX” for “subchapters V, XVIII, and XIX”.

1979—Pub. L. 96-32 amended directory language of Pub. L. 95-559 and required no change in text of section. See 1978 Amendment notes below.

1978—Subsecs. (a), (b). Pub. L. 95-559, §14(b)(1), (2), as amended by Pub. L. 96-32, struck out references to health maintenance organizations wherever appearing.

Subsec. (d). Pub. L. 95-559, §14(b)(1), (3), as amended by Pub. L. 96-32, struck out references to health maintenance organizations wherever appearing and in par. (2) “or organization, or of any facility of such organization,” after “expansion of such facility”.

1973—Subsec. (d)(1). Pub. L. 93-233, §18(z), inserted “or a fixed fee or negotiated rate” after “per capita” wherever appearing in last sentence.

Subsec. (d)(2). Pub. L. 93-233, §18(z-1), substituted “exclude” for “include” where last appearing.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective Aug. 5, 1997, and applicable to items and services furnished on or after such date, with provision that Secretary of Health and Human Services issue regulations to carry out such amendment by not later than July 1, 1998, see section 4454(d) of Pub. L. 105-33, set out as an Effective Date note under section 1395i-5 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. B, title III, §2354(e), July 18, 1984, 98 Stat. 1102, provided that:

“(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1316, 1320a-7a, 1320a-8, 1395f, 1395i, 1395i-2, 1395k, 1395l, 1395n, 1395p, 1395s to 1395z, 1395aa, 1395cc, 1395ff, 1395ii, 1395ll, 1395mm, 1395oo, 1395rr, and 1395ww of this title and section 162 of Title 26, Internal Revenue Code, and amending provisions set out as notes under sections 1320c, 1395x, and 1395mm of this title] shall be effective on the date of the enactment of this Act [July 18, 1984]; but none of such amendments shall be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date.

“(2) The amendments made by paragraphs (1) [amending section 1395f of this title and provisions set out as a note under section 1395x of this title], (2) [amending section 1316 of this title], and (3) [amending provisions set out as notes under sections 1320c and 1395mm of this title] of subsection (c) shall be effective as if they had been originally included in Public Laws 96-499, 97-35, and 97-248, respectively.”

#### 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. 92-603, title II, §221(b), Oct. 30, 1972, 86 Stat. 1389, provided that: “The amendment made by subsection (a) [enacting this section] shall apply only with respect to a capital expenditure the obligation for which is incurred by or on behalf of a health care facil-

ity or health maintenance organization subsequent to whichever of the following is earlier: (A) December 31, 1972, or (B) with respect to any State or any part thereof specified by such State, the last day of the calendar quarter in which the State requests that the amendment made by subsection (a) of this section [enacting this section] apply in such State or such part thereof.”

#### TERMINATION OF ADVISORY COUNCILS

Advisory councils in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

#### REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

#### EXPENDITURES OR OBLIGATIONS OF HEALTH CARE FACILITIES PROVIDING HEALTH CARE SERVICES PRIOR TO DECEMBER 18, 1970; LIMITATIONS ON FEDERAL PARTICIPATION

Pub. L. 92-603, title II, §221(d), Oct. 30, 1972, 86 Stat. 1389, provided that: “In the case of a health care facility providing health care services as of December 18, 1970, which on such date is committed to a formal plan of expansion or replacement, the amendments made by the preceding provisions of this section [enacting this section and amending sections 705, 706, 709, 1395x, 1396a, and 1396b of this title] shall not apply with respect to such expenditures as may be made or obligations incurred for capital items included in such plan where preliminary expenditures toward the plan of expansion or replacement (including payments for studies, surveys, designs, plans, working drawings, specifications, and site acquisition, essential to the acquisition, improvement, expansion, or replacement of the health care facility or equipment concerned) of \$100,000 or more, had been made during the three-year period ended December 17, 1970.”

#### § 1320a-1a. Transferred

##### CODIFICATION

Section, act Aug. 14, 1935, ch. 531, title XI, §1123, as added Oct. 31, 1994, Pub. L. 103-432, title II, §203(a), 108 Stat. 4454, which related to reviews of child and family services programs, and of foster care and adoption assistance programs, for conformity with State plan requirements, was renumbered section 1123A of act Aug. 14, 1935, by Pub. L. 104-193, title V, §504, Aug. 22, 1996, 110 Stat. 2278, and was transferred to section 1320a-2a of this title.

#### § 1320a-2. Effect of failure to carry out State plan

In an action brought to enforce a provision of this chapter, such provision is not to be deemed

unenforceable because of its inclusion in a section of this chapter requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in *Suter v. Artist M.*, 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability; provided, however, that this section is not intended to alter the holding in *Suter v. Artist M.* that section 671(a)(15) of this title is not enforceable in a private right of action.

(Aug. 14, 1935, ch. 531, title XI, §1123, as added Pub. L. 103-382, title V, §555(a), Oct. 20, 1994, 108 Stat. 4057.)

#### PRIOR PROVISIONS

A prior section 1320a-2, act Aug. 14, 1935, ch. 531, title XI, §1123, as added Oct. 30, 1972, Pub. L. 92-603, title II, §241, 86 Stat. 1418; amended Dec. 5, 1980, Pub. L. 96-499, title IX, §911, 94 Stat. 2619; Sept. 3, 1982, Pub. L. 97-248, title I, §126, 96 Stat. 366; Apr. 7, 1986, Pub. L. 99-272, title IX, §9303(b)(4), 100 Stat. 189, related to qualifications for health care personnel, prior to repeal by Pub. L. 100-360, title IV, §430(a), as added Pub. L. 100-485, title VI, §608(b), (g)(1), Oct. 13, 1988, 102 Stat. 2412, 2424, effective as if included in the enactment of Pub. L. 100-360.

Another section 1123 of act Aug. 14, 1935, was renumbered section 1123A, and is classified to section 1320a-2a of this title.

#### EFFECTIVE DATE

Pub. L. 103-382, title V, §555(b), Oct. 20, 1994, 108 Stat. 4058, provided that: "The amendment made by subsection (a) [enacting this section] shall apply to actions pending on the date of the enactment of this Act [Oct. 20, 1994] and to actions brought on or after such date of enactment."

### § 1320a-2a. Reviews of child and family services programs, and of foster care and adoption assistance programs, for conformity with State plan requirements

#### (a) In general

The Secretary, in consultation with the State agencies administering the State programs under parts B and E of subchapter IV, shall promulgate regulations for the review of such programs to determine whether such programs are in substantial conformity with—

- (1) State plan requirements under such parts B and E,
- (2) implementing regulations promulgated by the Secretary, and
- (3) the relevant approved State plans.

#### (b) Elements of review system

The regulations referred to in subsection (a) shall—

- (1) specify the timetable for conformity reviews of State programs, including—
  - (A) an initial review of each State program;
  - (B) a timely review of a State program following a review in which such program was found not to be in substantial conformity; and
  - (C) less frequent reviews of State programs which have been found to be in substantial

conformity, but such regulations shall permit the Secretary to reinstate more frequent reviews based on information which indicates that a State program may not be in conformity;

(2) specify the requirements subject to review (which shall include determining whether the State program is in conformity with the requirement of section 671(a)(27) of this title), and the criteria to be used to measure conformity with such requirements and to determine whether there is a substantial failure to so conform;

(3) specify the method to be used to determine the amount of any Federal matching funds to be withheld (subject to paragraph (4)) due to the State program's failure to so conform, which ensures that—

(A) such funds will not be withheld with respect to a program, unless it is determined that the program fails substantially to so conform;

(B) such funds will not be withheld for a failure to so conform resulting from the State's reliance upon and correct use of formal written statements of Federal law or policy provided to the State by the Secretary; and

(C) the amount of such funds withheld is related to the extent of the failure to so conform; and

(4) require the Secretary, with respect to any State program found to have failed substantially to so conform—

(A) to afford the State an opportunity to adopt and implement a corrective action plan, approved by the Secretary, designed to end the failure to so conform;

(B) to make technical assistance available to the State to the extent feasible to enable the State to develop and implement such a corrective action plan;

(C) to suspend the withholding of any Federal matching funds under this section while such a corrective action plan is in effect; and

(D) to rescind any such withholding if the failure to so conform is ended by successful completion of such a corrective action plan.

#### (c) Provisions for administrative and judicial review

The regulations referred to in subsection (a) shall—

(1) require the Secretary, not later than 10 days after a final determination that a program of the State is not in conformity, to notify the State of—

(A) the basis for the determination; and

(B) the amount of the Federal matching funds (if any) to be withheld from the State;

(2) afford the State an opportunity to appeal the determination to the Departmental Appeals Board within 60 days after receipt of the notice described in paragraph (1) (or, if later, after failure to continue or to complete a corrective action plan); and

(3) afford the State an opportunity to obtain judicial review of an adverse decision of the Board, within 60 days after the State receives notice of the decision of the Board, by appeal