

“(1) for whom a notice of determination under section 1156(b) of the Social Security Act [42 U.S.C. 1320c-5(b)] has been provided within 365 days before the date of the enactment of this Act [Dec. 22, 1987],

“(2) who has not exhausted the administrative remedies available under section 1156(b)(4) of such Act for review of the determination, and

“(3) who requests, within 90 days after the date of the enactment of this Act, a hearing established under this subsection, the Secretary of Health and Human Services shall provide for a hearing described in section 1156(b)(5) of the Social Security Act (as amended by subsection (a) of this section).

“(d) REDETERMINATIONS IN CERTAIN CASES.—If, in hearing under subsection (c), the judge does not determine, by a preponderance of the evidence, that the provider or practitioner will pose a serious risk to individuals entitled to benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] if permitted to continue or resume furnishing such services, the Secretary shall not effect the exclusion (or shall suspend the exclusion, if previously effected) under paragraph (2) of section 1156(b) of such Act [42 U.S.C. 1320c-5(b)] until the provider or practitioner has been provided an administrative hearing thereon under paragraph (4) of such section, notwithstanding any failure by the provider or practitioner to request the hearing on a timely basis.”

§ 1320c-6. Limitation on liability

(a) Providers of information to organizations having a contract with Secretary

Notwithstanding any other provision of law, no person providing information to any organization having a contract with the Secretary under this part shall be held, by reason of having provided such information, to have violated any criminal law, or to be civilly liable under any law of the United States or of any State (or political subdivision thereof) unless—

(1) such information is unrelated to the performance of the contract of such organization; or

(2) such information is false and the person providing it knew, or had reason to believe, that such information was false.

(b) Employees and fiduciaries of organizations having contracts with Secretary

No organization having a contract with the Secretary under this part and no person who is employed by, or who has a fiduciary relationship with, any such organization or who furnishes professional services to such organization, shall be held by reason of the performance of any duty, function, or activity required or authorized pursuant to this part or to a valid contract entered into under this part, to have violated any criminal law, or to be civilly liable under any law of the United States or of any State (or political subdivision thereof) provided due care was exercised in the performance of such duty, function, or activity.

(c) Physicians and providers

No doctor of medicine or osteopathy and no provider (including directors, trustees, employees, or officials thereof) of health care services shall be civilly liable to any person under any law of the United States or of any State (or political subdivision thereof) on account of any action taken by him in compliance with or reliance upon professionally developed norms of

care and treatment applied by an organization under contract pursuant to section 1320c-2 of this title operating in the area where such doctor of medicine or osteopathy or provider took such action; but only if—

(1) he takes such action in the exercise of his profession as a doctor of medicine or osteopathy or in the exercise of his functions as a provider of health care services; and

(2) he exercised due care in all professional conduct taken or directed by him and reasonably related to, and resulting from, the actions taken in compliance with or reliance upon such professionally accepted norms of care and treatment.

(d) Reimbursement by Secretary for expenses incurred in defense of legal proceedings

The Secretary shall make payment to an organization under contract with him pursuant to this part, or to any member or employee thereof, or to any person who furnishes legal counsel or services to such organization, in an amount equal to the reasonable amount of the expenses incurred, as determined by the Secretary, in connection with the defense of any suit, action, or proceeding brought against such organization, member, or employee related to the performance of any duty or function under such contract by such organization, member, or employee.

(Aug. 14, 1935, ch. 531, title XI, §1157, as added Pub. L. 97-248, title I, §143, Sept. 3, 1982, 96 Stat. 389; amended Pub. L. 101-508, title IV, §4205(f), Nov. 5, 1990, 104 Stat. 1388-114.)

PRIOR PROVISIONS

A prior section 1320c-6, act Aug. 14, 1935, ch. 531, title XI, §1157, as added Oct. 30, 1972, Pub. L. 92-603, title II, §249F(b), 86 Stat. 1437; amended Oct. 25, 1977, Pub. L. 95-142, §13(b)(4), 91 Stat. 1198, related to submission of reports by Professional Standards Review Organizations, prior to the general revision of this part by Pub. L. 97-248.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101-508 inserted “organization having a contract with the Secretary under this part and no” after “No”, struck out “by him” after “the performance”, and substituted “due care was exercised in the performance of such duty, function, or activity” for “he has exercised due care”.

§ 1320c-7. Application of this part to certain State programs receiving Federal financial assistance

(a) State plan provision that functions of quality improvement organizations may be performed by contract with such organization

A State plan approved under subchapter XIX of this chapter may provide that the functions specified in section 1320c-3 of this title may be performed in an area by contract with a quality improvement organization that has entered into a contract with the Secretary in accordance with the provisions of section 1395y(g) of this title.

(b) Federal share of expenditures

In the event a State enters into a contract in accordance with subsection (a), the Federal share of the expenditures made to the contract-

ing organization for its costs in the performance of its functions under the State plan shall be 75 percent (as provided in section 1396b(a)(3)(C) of this title).

(Aug. 14, 1935, ch. 531, title XI, §1158, as added Pub. L. 97-248, title I, §143, Sept. 3, 1982, 96 Stat. 390; amended Pub. L. 112-40, title II, §261(a)(2)(C), Oct. 21, 2011, 125 Stat. 423.)

PRIOR PROVISIONS

A prior section 1320c-7, act Aug. 14, 1935, ch. 531, title XI, §1158, as added Oct. 30, 1972, Pub. L. 92-603, title II, §249F(b), 86 Stat. 1437; amended Oct. 25, 1977, Pub. L. 95-142, §§5(d)(1), 22(a), 91 Stat. 1185, 1208; Dec. 5, 1980, Pub. L. 96-499, title IX, §§902(a)(3), 931(h), 94 Stat. 2613, 2634; Aug. 13, 1981, Pub. L. 97-35, title XXI, §§2113(e), 2121(g), 95 Stat. 794, 796, related to review approval as a condition of payment of claims, prior to the general revision of this part by Pub. L. 97-248.

AMENDMENTS

2011—Subsec. (a). Pub. L. 112-40 substituted “quality improvement” for “utilization and quality control peer review” in text.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112-40 applicable to contracts entered into or renewed on or after Jan. 1, 2012, see section 261(e) of Pub. L. 112-40, set out as a note under section 1320c of this title.

§ 1320c-8. Authorization for use of certain funds to administer provisions of this part

Expenses incurred in the administration of the contracts described in section 1395y(g) of this title shall be payable from—

- (1) funds in the Federal Hospital Insurance Trust Fund; and
- (2) funds in the Federal Supplementary Medical Insurance Trust Fund,

in such amounts from each of such Trust Funds as the Secretary shall deem to be fair and equitable after taking into consideration the expenses attributable to the administration of this part with respect to each of such programs. The Secretary shall make such transfers of moneys between such Trust Funds as may be appropriate to settle accounts between them in cases where expenses properly payable from one such Trust Fund have been paid from the other such Trust Fund.

(Aug. 14, 1935, ch. 531, title XI, §1159, as added Pub. L. 97-248, title I, §143, Sept. 3, 1982, 96 Stat. 390.)

PRIOR PROVISIONS

A prior section 1320c-8, act Aug. 14, 1935, ch. 531, title XI, §1159, as added Oct. 30, 1972, Pub. L. 92-603, title II, §249F(b), 86 Stat. 1437; amended Aug. 13, 1981, Pub. L. 97-35, title XXI, §2113(f), 95 Stat. 795, related to reconsideration hearing and review, prior to the general revision of this part by Pub. L. 97-248.

§ 1320c-9. Prohibition against disclosure of information

(a) Freedom of Information Act inapplicable; exceptions to nondisclosure

An organization, in carrying out its functions under a contract entered into under this part, shall not be a Federal agency for purposes of the provisions of section 552 of title 5 (commonly re-

ferred to as the Freedom of Information Act). Any data or information acquired by any such organization in the exercise of its duties and functions shall be held in confidence and shall not be disclosed to any person except—

- (1) to the extent that may be necessary to carry out the purposes of this part,
- (2) in such cases and under such circumstances as the Secretary shall by regulations provide to assure adequate protection of the rights and interests of patients, health care practitioners, or providers of health care, or
- (3) in accordance with subsection (b).

(b) Disclosure of information permitted

An organization having a contract with the Secretary under this part shall provide in accordance with procedures and safeguards established by the Secretary, data and information—

- (1) which may identify specific providers or practitioners as may be necessary—

(A) to assist Federal and State agencies recognized by the Secretary as having responsibility for identifying and investigating cases or patterns of fraud or abuse, which data and information shall be provided by the quality improvement organization to any such agency at the request of such agency relating to a specific case or pattern;

(B) to assist appropriate Federal and State agencies recognized by the Secretary as having responsibility for identifying cases or patterns involving risks to the public health, which data and information shall be provided by the quality improvement organization to any such agency—

(i) at the discretion of the quality improvement organization, at the request of such agency relating to a specific case or pattern with respect to which such agency has made a finding, or has a reasonable belief, that there may be a substantial risk to the public health, or

(ii) upon a finding by, or the reasonable belief of, the quality improvement organization that there may be a substantial risk to the public health;

(C) to assist appropriate State agencies recognized by the Secretary as having responsibility for licensing or certification of providers or practitioners or to assist national accreditation bodies acting pursuant to section 1395bb of this title in accrediting providers for purposes of meeting the conditions described in subchapter XVIII, which data and information shall be provided by the quality improvement organization to any such agency or body at the request of such agency or body relating to a specific case or to a possible pattern of substandard care, but only to the extent that such data and information are required by the agency or body to carry out its respective function which is within the jurisdiction of the agency or body under State law or under section 1395bb of this title; and

(D) to provide notice in accordance with section 1320c-3(a)(9)(B) of this title;

- (2) to assist the Secretary, and such Federal and State agencies recognized by the Sec-