

cal year 1982, prior to repeal by Pub. L. 97-35, title XXI, §2155, Aug. 13, 1981, 95 Stat. 802.

§ 1395h. Provisions relating to the administration of part A

(a) In general

The administration of this part shall be conducted through contracts with medicare administrative contractors under section 1395kk-1 of this title.

(b) Repealed. Pub. L. 108-173, title IX, §911(b)(3), Dec. 8, 2003, 117 Stat. 2383

(c) Prompt payment of claims

(1) Repealed. Pub. L. 108-173, title IX, §911(b)(4)(A), Dec. 8, 2003, 117 Stat. 2383.

(2)(A) Each contract under section 1395kk-1 of this title that provides for making payments under this part shall provide that payment shall be issued, mailed, or otherwise transmitted with respect to not less than 95 percent of all claims submitted under this subchapter—

(i) which are clean claims, and

(ii) for which payment is not made on a periodic interim payment basis,

within the applicable number of calendar days after the date on which the claim is received.

(B) In this paragraph:

(i) The term “clean claim” means a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this subchapter.

(ii) The term “applicable number of calendar days” means—

(I) with respect to claims received in the 12-month period beginning October 1, 1986, 30 calendar days,

(II) with respect to claims received in the 12-month period beginning October 1, 1987, 26 calendar days,

(III) with respect to claims received in the 12-month period beginning October 1, 1988, 25 calendar days,

(IV) with respect to claims received in the 12-month period beginning October 1, 1989, and claims received in any succeeding 12-month period ending on or before September 30, 1993, 24 calendar days, and

(V) with respect to claims received in the 12-month period beginning October 1, 1993, and claims received in any succeeding 12-month period, 30 calendar days.

(C) If payment is not issued, mailed, or otherwise transmitted within the applicable number of calendar days (as defined in clause (ii) of subparagraph (B)) after a clean claim (as defined in clause (i) of such subparagraph) is received from a hospital, critical access hospital, skilled nursing facility, home health agency, hospice program, comprehensive outpatient rehabilitation facility, or rehabilitation agency that is not receiving payments on a periodic interim payment basis with respect to such services, interest shall be paid at the rate used for purposes of section 3902(a) of title 31 (relating to interest penalties for failure to make prompt payments) for

the period beginning on the day after the required payment date and ending on the date on which payment is made.

(3)(A) Each contract under section 1395kk-1 of this title that provides for making payments under this part shall provide that no payment shall be issued, mailed, or otherwise transmitted with respect to any claim submitted under this subchapter within the applicable number of calendar days after the date on which the claim is received.

(B) In this paragraph, the term “applicable number of calendar days” means—

(i) with respect to claims submitted electronically as prescribed by the Secretary, 13 days, and

(ii) with respect to claims submitted otherwise, 28 days.

(d) to (i). Repealed. Pub. L. 108-173, title IX, §911(b)(5), Dec. 8, 2003, 117 Stat. 2383

(j) Denial of claim; notification and reconsideration

A contract with a medicare administrative contractor under section 1395kk-1 of this title with respect to the administration of this part shall require that, with respect to a claim for home health services, extended care services, or post-hospital extended care services submitted by a provider to such medicare administrative contractor that is denied, such medicare administrative contractor—

(1) furnish the provider and the individual with respect to whom the claim is made with a written explanation of the denial and of the statutory or regulatory basis for the denial; and

(2) in the case of a request for reconsideration of a denial, promptly notify such individual and the provider of the disposition of such reconsideration.

(k) Annual reporting requirement on erroneous payment recovery

A contract with a medicare administrative contractor under section 1395kk-1 of this title with respect to the administration of this part shall require that such medicare administrative contractor submit an annual report to the Secretary describing the steps taken to recover payments made for items or services for which payment has been or could be made under a primary plan (as defined in section 1395y(b)(2)(A) of this title).

(l) Repealed. Pub. L. 108-173, title IX, §911(b)(7), Dec. 8, 2003, 117 Stat. 2383

(Aug. 14, 1935, ch. 531, title XVIII, §1816, as added Pub. L. 89-97, title I, §102(a), July 30, 1965, 79 Stat. 297; amended Pub. L. 92-603, title II, §243(b), Oct. 30, 1972, 86 Stat. 1422; Pub. L. 95-142, §14(a), Oct. 25, 1977, 91 Stat. 1198; Pub. L. 96-499, title IX, §930(o), Dec. 5, 1980, 94 Stat. 2632; Pub. L. 97-248, title I, §122(c)(3), Sept. 3, 1982, 96 Stat. 359; Pub. L. 98-369, div. B, title III, §2326(b), (c)(1), (d)(1), July 18, 1984, 98 Stat. 1087; Pub. L. 99-509, title IX, §§9311(b), 9352(a)(2), Oct. 21, 1986, 100 Stat. 1997, 2044; Pub. L. 100-203, title IV, §§4031(a)(1), 4032(a), (b), 4035(a)(1), 4085(d)(1), Dec. 22, 1987, 101 Stat. 1330-75 to 1330-78, 1330-130; Pub. L. 100-360, title II, §203(f), title IV, §411(e)(1)(B),

July 1, 1988, 102 Stat. 725, 775; Pub. L. 101-234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101-239, title VI, §§ 6003(g)(3)(D)(vi), 6202(d)(1), Dec. 19, 1989, 103 Stat. 2153, 2234; Pub. L. 101-508, title IV, § 4005(c)(1)(A), Nov. 5, 1990, 104 Stat. 1388-41; Pub. L. 103-66, title XIII, § 13568(a), (b), Aug. 10, 1993, 107 Stat. 608; Pub. L. 103-432, title I, §§ 110(d)(2), 151(b)(1)(A), (2)(A), Oct. 31, 1994, 108 Stat. 4408, 4433, 4434; Pub. L. 104-191, title II, § 202(b)(1), Aug. 21, 1996, 110 Stat. 1998; Pub. L. 105-33, title IV, § 4201(c)(1), Aug. 5, 1997, 111 Stat. 373; Pub. L. 108-173, title VII, § 736(a)(4), title IX, § 911(b), Dec. 8, 2003, 117 Stat. 2355, 2383; Pub. L. 109-171, title V, § 5202(a)(1), Feb. 8, 2006, 120 Stat. 47.)

AMENDMENTS

2006—Subsec. (c)(3)(B)(ii). Pub. L. 109-171 substituted “28 days” for “26 days”.

2003—Pub. L. 108-173, § 911(b)(1), substituted “Provisions relating to the administration of part A” for “Use of public or private agencies or organizations to facilitate payment to providers of services” in section catchline.

Subsec. (a). Pub. L. 108-173, § 911(b)(2), amended subsec. (a) generally. Prior to amendment, subsec. (a) authorized Secretary to enter into agreements with agencies or organizations to determine and pay amounts under this part.

Subsec. (b). Pub. L. 108-173, § 911(b)(3), struck out subsec. (b), which set forth prerequisites for agreement or renewal of agreement.

Subsec. (c)(1). Pub. L. 108-173, § 911(b)(4)(A), struck out par. (1), which related to terms and conditions of agreements.

Subsec. (c)(2)(A). Pub. L. 108-173, § 911(b)(4)(B), substituted “contract under section 1395kk-1 of this title that provides for making payments under this part” for “agreement under this section” in introductory provisions.

Subsec. (c)(2)(B)(ii)(III). Pub. L. 108-173, § 736(a)(4)(A), struck out “and” at end.

Subsec. (c)(2)(B)(ii)(IV). Pub. L. 108-173, § 736(a)(4)(B), substituted “, and” for period at end.

Subsec. (c)(3)(A). Pub. L. 108-173, § 911(b)(4)(B), substituted “contract under section 1395kk-1 of this title that provides for making payments under this part” for “agreement under this section”.

Subsecs. (d) to (i). Pub. L. 108-173, § 911(b)(5), struck out subsecs. (d) to (i), which related to nomination of agency or organization, designation of agency or organization to perform provider services, standards, criteria, and procedures for evaluation of agency or organization performance, termination of agreement, bonding requirement for officers and employees, and liability of certifying and disbursing officers.

Subsec. (j). Pub. L. 108-173, § 911(b)(6), in introductory provisions, substituted “A contract with a medicare administrative contractor under section 1395kk-1 of this title with respect to the administration of this part” for “An agreement with an agency or organization under this section” and “such medicare administrative contractor” for “such agency or organization” in two places.

Subsec. (k). Pub. L. 108-173, § 911(b)(6), substituted “A contract with a medicare administrative contractor under section 1395kk-1 of this title with respect to the administration of this part” for “An agreement with an agency or organization under this section” and “such medicare administrative contractor” for “such agency or organization”.

Subsec. (l). Pub. L. 108-173, § 911(b)(7), struck out subsec. (l), which prohibited any activity pursuant to an agreement under this section that is carried out pursuant to a contract under the Medicare Integrity Program.

1997—Subsec. (c)(2)(C). Pub. L. 105-33 substituted “critical access” for “rural primary care”.

1996—Subsec. (l). Pub. L. 104-191 added subsec. (l).

1994—Subsec. (f)(1)(A). Pub. L. 103-432, § 151(b)(2)(A), inserted “(including the agency’s or organization’s success in recovering payments made under this subchapter for services for which payment has been or could be made under a primary plan (as defined in section 1395y(b)(2)(A) of this title))” after “processing”.

Subsec. (f)(2)(A)(ii). Pub. L. 103-432, § 110(d)(2), substituted “such agency’s” for “such agency”.

Subsec. (k). Pub. L. 103-432, § 151(b)(1)(A), added subsec. (k).

1993—Subsec. (c)(2)(B)(ii)(IV), (V). Pub. L. 103-66, § 13568(b), substituted “period ending on or before September 30, 1993” for “period” in subcl. (IV) and added subcl. (V).

Subsec. (c)(3)(B). Pub. L. 103-66, § 13568(a), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

“(i) with respect to claims received in the 3-month period beginning July 1, 1988, 10 days, and

“(ii) with respect to claims received in the 12-month period beginning October 1, 1988, 14 days.”

1990—Subsec. (f). Pub. L. 101-508 designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, struck out “Such standards and criteria” and all that follows, which was executed by striking out “Such standards and criteria shall be published in the Federal Register, and opportunity shall be provided for public comment prior to implementation. Such standards and criteria shall include with respect to claims for services furnished under this part by any provider of services other than a hospital whether such agency or organization is able to process 75 percent of reconsiderations within 60 days (except in the case of the fiscal year 1989, 66 percent of reconsiderations) and 90 percent of reconsiderations within 90 days and the extent to which its determinations are reversed on appeal.”, and added par. (2).

1989—Subsec. (c)(1). Pub. L. 101-239, § 6202(d)(1), inserted at end “The Secretary may not require, as a condition of entering into or renewing an agreement under this section or under section 1395hh of this title, that a fiscal intermediary match data obtained other than in its activities under this part with data used in the administration of this part for purposes of identifying situations in which the provisions of section 1395y(b) of this title may apply.”

Subsec. (c)(2)(C). Pub. L. 101-239, § 6003(g)(3)(D)(vi), inserted “rural primary care hospital,” after “hospital.”.

Subsec. (k). Pub. L. 101-234 repealed Pub. L. 100-360, § 203(f), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (j)(2). Pub. L. 100-360, § 411(e)(1)(B), inserted “in the case of a request for reconsideration of a denial,” and substituted “the disposition” for “disposition”.

Subsec. (k). Pub. L. 100-360, § 203(f), added subsec. (k) relating to use of regional intermediaries in administration of benefits.

1987—Subsec. (c)(1). Pub. L. 100-203, § 4035(a)(1), inserted at end “The Secretary shall cause to have published in the Federal Register, by not later than September 1 before each fiscal year, data, standards, and methodology to be used to establish budgets for fiscal intermediaries under this section for that fiscal year, and shall cause to be published in the Federal Register for public comment, at least 90 days before such data, standards, and methodology are published, the data, standards, and methodology proposed to be used.”

Subsec. (c)(2)(C). Pub. L. 100-203, § 4085(d)(1), substituted “hospice program, comprehensive outpatient rehabilitation facility, or rehabilitation agency” for “or hospice program”.

Subsec. (c)(3). Pub. L. 100-203, § 4031(a)(1), added par. (3).

Subsec. (f). Pub. L. 100-203, § 4023(b), inserted at end “Such standards and criteria shall include with respect to claims for services furnished under this part by any

provider of services other than a hospital whether such agency or organization is able to process 75 percent of reconsiderations within 60 days (except in the case of the fiscal year 1989, 66 percent of reconsiderations) and 90 percent of reconsiderations within 90 days and the extent to which its determinations are reversed on appeal.”

Subsec. (j). Pub. L. 100-203, § 4032(a), added subsec. (j). 1986—Subsec. (a). Pub. L. 99-509, § 9352(a)(2), inserted at end “As used in this subchapter and part B of subchapter XI of this chapter, the term ‘fiscal intermediary’ means an agency or organization with a contract under this section.”

Subsec. (c). Pub. L. 99-509, § 9311(b), designated existing provisions as par. (1) and added par. (2).

1984—Subsec. (c). Pub. L. 98-369, § 2326(d)(1), inserted provision that the Secretary, in determining the necessary and proper cost of administration with respect to each agreement, take into account the amount that is reasonable and adequate to meet the costs which must be incurred by an efficiently and economically operated agency or organization in carrying out the terms of its agreement.

Subsec. (e)(4). Pub. L. 98-369, § 2326(b), inserted provision that not later than July 1, 1987, the Secretary limit the number of regional agencies or organizations to not more than ten.

Subsec. (f). Pub. L. 98-369, § 2326(c)(1), struck out in cl. (2) “, by regulation,” after “Secretary shall establish” and inserted provision that the standards and criteria be published in the Federal Register and an opportunity be provided for public comment prior to implementation.

1982—Subsec. (e)(5). Pub. L. 97-248 added par. (5).

1980—Subsec. (e)(2). Pub. L. 96-499, § 930(o)(1), inserted “(subject to the provisions of paragraph (4))”.

Subsec. (e)(4). Pub. L. 96-499, § 930(o)(2), added par. (4).

1977—Subsec. (a). Pub. L. 95-142, § 14(a)(1), inserted provisions relating to applicability to providers assigned to the agency or organization under subsec. (e) of this section.

Subsec. (b). Pub. L. 95-142, § 14(a)(2), substituted provisions setting forth criteria for agreements with the Secretary or renewal of such agreements with agencies or organizations, for provisions setting forth criteria for agreements with the Secretary with agencies or organizations.

Subsecs. (e), (f). Pub. L. 95-142, § 14(a)(4), (5), added subsecs. (e) and (f). Former subsecs. (e) and (f) redesignated (g) and (h), respectively.

Subsec. (g). Pub. L. 95-142, § 14(a)(3), (4), redesignated former subsec. (e) as (g) and inserted provisions relating to applicability of standards, etc., developed under subsec. (f) of this section. Former subsec. (g) redesignated (i).

Subsecs. (h), (i). Pub. L. 95-142, § 14(a)(4), redesignated former subsecs. (f) and (g) as (h) and (i), respectively.

1972—Subsec. (a). Pub. L. 92-603 inserted reference to provisions of section 1395oo of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-171, title V, § 5202(b), Feb. 8, 2006, 120 Stat. 47, provided that: “The amendments made by this section [amending this section and section 1395u of this title] shall apply to claims submitted on or after January 1, 2006.”

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 911(b) of Pub. L. 108-173 effective Oct. 1, 2005, except as otherwise provided, with transition rules authorizing Secretary of Health and Human Services to continue to enter into agreements under this section prior to such date, and provisions authorizing continuation of Medicare Integrity Program functions during the period that begins on Dec. 8, 2003, and ends on Oct. 1, 2011, see section 911(d) of Pub. L. 108-173, set out as an Effective Date; Transition Rule note under section 1395kk-1 of this title.

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 1994 AMENDMENT

Pub. L. 103-432, title I, § 151(b)(4), Oct. 31, 1994, 108 Stat. 4435, provided that: “The amendments made by paragraphs (1) and (2) [amending this section and section 1395u of this title] shall apply to contracts with fiscal intermediaries and carriers under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] for contract years beginning with 1995.”

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-66, title XIII, § 13568(c), Aug. 10, 1993, 107 Stat. 608, provided that: “The amendments made by this section [amending this section and section 1395u of this title] shall apply to claims received on or after October 1, 1993.”

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-239, title VI, § 6202(d)(3), Dec. 19, 1989, 103 Stat. 2234, provided that: “The amendments made by this subsection [amending this section and section 1395u of this title] shall apply to agreements and contracts entered into or renewed on or after the date of the enactment of this Act [Dec. 19, 1989].”

Amendment by Pub. L. 101-234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101-234, set out as a note under section 1320a-7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 203(f) of Pub. L. 100-360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100-360, set out as a note under section 1320c-3 of this title.

Except as specifically provided in section 411 of Pub. L. 100-360, amendment by section 411(e)(1)(B) of Pub. L. 100-360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, effective as if included in the enactment of that provision in Pub. L. 100-203, see section 411(a) of Pub. L. 100-360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-203, title IV, § 4031(a)(3)(A), Dec. 22, 1987, 101 Stat. 1330-76, provided that: “The amendments made by paragraphs (1) and (2) [amending this section and section 1395u of this title] shall apply to claims received on or after July 1, 1988.”

Pub. L. 100-203, title IV, § 4032(c)(1), Dec. 22, 1987, 101 Stat. 1330-77, as amended by Pub. L. 100-360, title IV, § 411(e)(1)(C), July 1, 1988, 102 Stat. 775, provided that:

“(A) The amendment made by subsection (a) [amending this section] shall apply with respect to claims received on or after January 1, 1988.

“(B) The amendment made by subsection (b) [amending this section] shall apply with respect to reconsiderations requested on or after October 1, 1988.”

Pub. L. 100-203, title IV, § 4035(a)(3), Dec. 22, 1987, 101 Stat. 1330-78, provided that: “The amendments made by this section [amending this section and sections 1395u and 1395hh of this title] shall take effect on the date of the enactment of this Act [Dec. 22, 1987] and shall apply to budgets for fiscal years beginning with fiscal year 1989.”

Pub. L. 100-203, title IV, § 4085(d)(2), Dec. 22, 1987, 101 Stat. 1330-131, provided that:

“(A) The amendment made by paragraph (1) [amending this section] shall apply to claims received on or after the date of enactment of this Act [Dec. 22, 1987].

“(B) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 [42 U.S.C. 1395h], and regulations, to such extent as may be necessary to implement the amendment made by paragraph (1).”

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-509, title IX, § 9311(d), Oct. 21, 1986, 100 Stat. 1999, provided that:

“(1) Except as provided in paragraph (2), the amendments made by subsections (b) and (c) [amending this section and section 1395u of this title] shall apply to claims received on or after November 1, 1986.

“(2) Sections 1816(c)(2)(C) [sic] and 1842(c)(2)(C) of the Social Security Act [42 U.S.C. 1395h(c)(2)(C), 1395u(c)(2)(C)], as added by such amendments, shall apply to claims received on or after April 1, 1987.

“(3) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 of the Social Security Act [42 U.S.C. 1395h] and contracts under section 1842 of such Act [42 U.S.C. 1395u], and regulations, to such extent as may be necessary to implement the provisions of this Act on a timely basis.”

Amendment by section 9352(a)(2) of Pub. L. 99-509 to be implemented by Secretary of Health and Human Services not later than 6 months after Oct. 21, 1986, see section 9352(c)(1) of Pub. L. 99-509, set out as a note under section 1320c-2 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. B, title III, §2326(d)(3), July 18, 1984, 98 Stat. 1088, provided that: “The amendments made by this subsection [amending this section and section 1395u of this title] shall apply to agreements and contracts entered into or renewed after September 30, 1984.”

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97-248, as amended, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-499 effective Dec. 5, 1980, see section 930(s)(1) of Pub. L. 96-499, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95-142, §14(c), (d), Oct. 25, 1977, 91 Stat. 1200, provided that:

“(c) The amendment made by paragraphs (2) and (3) of subsection (a) [amending this section] to the extent that they require application of standards, criteria, and procedures developed under section 1816(f) of the Social Security Act [42 U.S.C. 1395h(f)] shall apply to the entering into, renewal, or termination of agreements on and after October 1, 1978.

“(d) Except as provided in subsection (c), the amendment made by subsection (a)(2) [amending this section] shall apply to agreements entered into or renewed on or after the date of enactment of this Act [Oct. 25, 1977].”

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-603 applicable with respect to cost reports of providers of services for accounting periods ending on or after June 30, 1973, see section 243(c) of Pub. L. 92-603, set out as an Effective Date note under section 1395oo of this title.

ADVISORY COMMITTEE ON MEDICARE HOME HEALTH CLAIMS

Pub. L. 100-360, title IV, §427, July 1, 1988, 102 Stat. 814, which provided that the Administrator of the Health Care Financing Administration was to establish an advisory committee to be known as the Advisory Committee on Medicare Home Health Claims to study the reasons for the increase in the denial of claims for home health services during 1986 and 1987, the ramifications of such increase, and the need to reform the process involved in such denials, was repealed by Pub. L. 101-234, title III, §301(a), Dec. 13, 1989, 103 Stat. 1985.

AMENDMENTS TO AGREEMENTS AND CONTRACTS NECESSARY TO IMPLEMENT SECTION 4031(a) OF PUB. L. 100-203

Pub. L. 100-203, title IV, §4031(a)(3)(B), Dec. 22, 1987, 101 Stat. 1330-76, provided that: “The Secretary of

Health and Human Services shall provide for such timely amendments to agreements under section 1816 of the Social Security Act [42 U.S.C. 1395h] and contracts under section 1842 of such Act [42 U.S.C. 1395u], and regulations, to such extent as may be necessary to implement the provisions of this subsection [amending this section and section 1395u of this title] on a timely basis.”

PROHIBITION OF POLICIES OTHER THAN AS PROVIDED BY SECTION 4031 OF PUB. L. 100-203 INTENDED TO SLOW DOWN MEDICARE PAYMENTS; BUDGET CONSIDERATIONS

Pub. L. 100-203, title IV, §4031(b), (c), Dec. 22, 1987, 101 Stat. 1330-76, provided that, notwithstanding any other provision of law, the Secretary of Health and Human Services was not authorized to issue, after Dec. 22, 1987, and before Oct. 1, 1990, any final regulation, instruction, or other policy change which was primarily intended to have the effect of slowing down claims processing, or delaying payment of claims, under this subchapter, and that section 4031 of Pub. L. 100-203, amending this section and section 1395u of this title and enacting provisions set out as notes under this section, was a necessary (but secondary) result of a significant policy change.

AMENDMENTS TO AGREEMENTS AND CONTRACTS NECESSARY TO IMPLEMENT SECTION 4032(a), (b) OF PUB. L. 100-203

Pub. L. 100-203, title IV, §4032(c)(2), Dec. 22, 1987, 101 Stat. 1330-77, provided that: “The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 [42 U.S.C. 1395h] and contracts under section 1842 of the Social Security Act [42 U.S.C. 1395u], and regulations, to such extent as may be necessary to implement the amendments made by subsections (a) and (b) [amending this section] on a timely basis.”

REPLACEMENT OF AGENCY, ORGANIZATION, OR CARRIER PROCESSING MEDICARE CLAIMS; NUMBER OF AGREEMENTS AND CONTRACTS AUTHORIZED FOR FISCAL YEARS 1985 THROUGH 1993

Pub. L. 98-369, div. B, title III, §2326(a), July 18, 1984, 98 Stat. 1087, as amended by Pub. L. 98-617, §3(a)(2), Nov. 8, 1984, 98 Stat. 3295; Pub. L. 99-509, title IX, §9321(b), Oct. 21, 1986, 100 Stat. 2016; Pub. L. 101-239, title VI, §6215(a), Dec. 19, 1989, 103 Stat. 2252; Pub. L. 103-432, title I, §159(a), Oct. 31, 1994, 108 Stat. 4443, provided that: “During each fiscal year (beginning with fiscal year 1985 and ending with fiscal year 1993), the Secretary of Health and Human Services may enter into not more than two agreements under section 1816 of the Social Security Act [42 U.S.C. 1395h], and not more than two contracts under section 1842 of such Act [42 U.S.C. 1395u], on the basis of competitive bidding, without regard to the nominating process under section 1816(a) of such Act or cost reimbursement provisions under sections 1816(c) or 1842(c) of such Act during the term of the agreement. Such procedure may be used only for the purpose of replacing an agency or organization or carrier which over a 2-year period of time has been in the lowest 20th percentile of agencies and organizations or carriers having agreements or contracts under the respective section, as measured by the Secretary's cost and performance criteria. In addition, beginning with fiscal year 1990 and any subsequent fiscal year the Secretary may enter into such additional agreements and contracts without regard to such cost reimbursement provisions if the fiscal intermediary or carrier involved and the Secretary agree to waive such provisions, but the Secretary may not take any action that has the effect of requiring that the intermediary or carrier agree to waive such provisions, including requiring such a waiver as a condition for entering into or renewing such an agreement or contract. Any agency or organization or carrier selected on the basis of competitive bidding must perform all of the duties listed in section 1816(a) of such Act, or the duties listed in

paragraphs (1) through (4) of section 1842(a) of such Act, as the case may be, and must be a health insuring organization (as determined by the Secretary).”

[Pub. L. 103-432, title I, § 159(b), Oct. 31, 1994, 108 Stat. 4443, provided that: “The amendment made by subsection (a) [amending section 2326(a) of Pub. L. 98-369, set out above] shall apply beginning with fiscal year 1994.”]

[Pub. L. 101-239, title VI, § 6215(b), Dec. 19, 1989, 103 Stat. 2252, provided that: “The amendments made by subsection (a) [amending section 2326(a) of Pub. L. 98-369, set out above] shall apply beginning with fiscal year 1990.”]

AUDIT AND MEDICAL CLAIMS REVIEW

Pub. L. 97-248, title I, § 118, Sept. 3, 1982, 96 Stat. 355, as amended by Pub. L. 99-272, title IX, § 9216(a), Apr. 7, 1986, 100 Stat. 180, provided that, in addition to any funds otherwise provided for payments to intermediaries and carriers under agreements entered into under this section and section 1395u of this title, there were transferred from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Fund an additional \$45,000,000 for each of fiscal years 1983, 1984, and 1985, and \$105,000,000 for each of fiscal years 1986, 1987, and 1988 for payments to such intermediaries and carriers under such agreements to be used exclusively for purposes of carrying out provider cost audits, of reviewing medical necessity, and of recovering third-party liability payments.

DEVELOPMENTAL DATE FOR STANDARDS, CRITERIA, AND PROCEDURES PURSUANT TO SUBSEC. (f) OF THIS SECTION

Pub. L. 95-142, § 14(b), Oct. 15, 1977, 91 Stat. 1200, directed the Secretary of Health, Education, and Welfare to develop the standards, criteria, and procedures described in subsection (f) of section 1816 of the Social Security Act [42 U.S.C. 1395h(f)] (as added by subsection (a)(5)) not later than Oct. 1, 1978.

§ 1395i. Federal Hospital Insurance Trust Fund

(a) Creation; deposits; transfers from Treasury

There is hereby created on the books of the Treasury of the United States a trust fund to be known as the “Federal Hospital Insurance Trust Fund” (hereinafter in this section referred to as the “Trust Fund”). The Trust Fund shall consist of such gifts and bequests as may be made as provided in section 401(i)(1) of this title, and such amounts as may be deposited in, or appropriated to, such fund as provided in this part. There are hereby appropriated to the Trust Fund for the fiscal year ending June 30, 1966, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1) the taxes imposed by sections 3101(b) and 3111(b) of the Internal Revenue Code of 1986 with respect to wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of such Code after December 31, 1965, as determined by the Secretary of the Treasury by applying the applicable rates of tax under such sections to such wages, which wages shall be certified by the Commissioner of Social Security on the basis of records of wages established and maintained by the Commissioner of Social Security in accordance with such reports; and

(2) the taxes imposed by section 1401(b) of the Internal Revenue Code of 1986 with respect to self-employment income reported to the Secretary of the Treasury or his delegate on

tax returns under subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such section to such self-employment income, which self-employment income shall be certified by the Commissioner of Social Security on the basis of records of self-employment established and maintained by the Commissioner of Social Security in accordance with such returns.

The amounts appropriated by the preceding sentence shall be transferred from time to time from the general fund in the Treasury to the Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in the preceding sentence, paid to or deposited into the Treasury; and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the taxes specified in such sentence.

(b) Board of Trustees; composition; meetings; duties

With respect to the Trust Fund, there is hereby created a body to be known as the Board of Trustees of the Trust Fund (hereinafter in this section referred to as the “Board of Trustees”) composed of the Commissioner of Social Security, the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate. A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member’s term until the earlier of the time at which the member’s successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member’s term. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this section referred to as the “Managing Trustee”). The Administrator of the Centers for Medicare & Medicaid Services shall serve as the Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

(1) Hold the Trust Fund;

(2) Report to the Congress not later than the first day of April of each year on the operation and status of the Trust Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next 2 fiscal years; Each report provided under paragraph (2) beginning with the report in 2005 shall include the information specified in section 801(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.¹

¹ So in original. See 2003 Amendment note below.