

a Short Title of 1973 Amendments note under section 201 of this title.

QUALIFICATION OF HEALTH MAINTENANCE ORGANIZATION CONTINGENT UPON CONTROLLING ORGANIZATION'S ASSUMPTION OF FINANCIAL OBLIGATIONS AND MEETING OTHER REQUIREMENTS

Pub. L. 100-517, §5(a)(3), Oct. 24, 1988, 102 Stat. 2579, provided that: "During the period prior to the effective date of regulations issued under section 1301(c) of the Public Health Service Act [42 U.S.C. 300e(c)] (as amended by paragraph (2)), the Secretary of Health and Human Services shall consider the application for qualification under section 1301(c)(1)(A) of such Act of a health maintenance organization—

"(A) which is owned or controlled by another organization, and

"(B) which requests that the resources of the other organization be considered in determining its qualification under such section,

if the Secretary receives satisfactory assurances from the other organization that it will assume the financial obligations of the health maintenance organization and if the Secretary determines that the other organization meets such other requirements as the Secretary determines are necessary."

STUDY ON HEALTH MAINTENANCE ORGANIZATION PROGRAM

Pub. L. 99-660, title VIII, §813, Nov. 14, 1986, 100 Stat. 3801, which provided for a study to assess the operation and impact of the provisions of this subchapter and a report to Congress on the findings and conclusions of such study within 18 months after Nov. 14, 1986, was repealed by Pub. L. 102-531, title III, §311(a), Oct. 27, 1992, 106 Stat. 3503, effective as if such repeal was enacted on Nov. 14, 1986.

HEALTH CARE QUALITY ASSURANCE PROGRAMS STUDY

Pub. L. 93-222, §4, Dec. 29, 1973, 87 Stat. 934, required Secretary of Health, Education, and Welfare to contract for conduct of a study of health care quality assurance programs and submit a final report to specific committees of Congress by Jan. 31, 1976.

§ 300e-1. Definitions

For purposes of this subchapter:

(1) The term "basic health services" means—

(A) physician services (including consultant and referral services by a physician);

(B) inpatient and outpatient hospital services;

(C) medically necessary emergency health services;

(D) short-term (not to exceed twenty visits), outpatient evaluative and crisis intervention mental health services;

(E) medical treatment and referral services (including referral services to appropriate ancillary services) for the abuse of or addiction to alcohol and drugs;

(F) diagnostic laboratory and diagnostic and therapeutic radiologic services;

(G) home health services; and

(H) preventive health services (including (i) immunizations, (ii) well-child care from birth, (iii) periodic health evaluations for adults, (iv) voluntary family planning services, (v) infertility services, and (vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction).

Such term does not include a health service which the Secretary, upon application of a health maintenance organization, determines is

unusual and infrequently provided and not necessary for the protection of individual health. The Secretary shall publish in the Federal Register each determination made by him under the preceding sentence. If a service of a physician described in the preceding sentence may also be provided under applicable State law by a dentist, optometrist, podiatrist, psychologist, or other health care personnel, a health maintenance organization may provide such service through a dentist, optometrist, podiatrist, psychologist, or other health care personnel (as the case may be) licensed to provide such service. Such term includes a health service directly associated with an organ transplant only if such organ transplant was required to be included in basic health services on April 15, 1985. For purposes of this paragraph, the term "home health services" means health services provided at a member's home by health care personnel, as prescribed or directed by the responsible physician or other authority designated by the health maintenance organization.

(2) The term "supplemental health services" means any health service which is not included as a basic health service under paragraph (1) of this section. If a health service provided by a physician may also be provided under applicable State law by a dentist, optometrist, podiatrist, psychologist, or other health care personnel, a health maintenance organization may provide such service through an optometrist, dentist, podiatrist, psychologist, or other health care personnel (as the case may be) licensed to provide such service.

(3) The term "member" when used in connection with a health maintenance organization means an individual who has entered into a contractual arrangement, or on whose behalf a contractual arrangement has been entered into, with the organization under which the organization assumes the responsibility for the provision to such individual of basic health services and of such supplemental health services as may be contracted for.

(4) The term "medical group" means a partnership, association, or other group—

(A) which is composed of health professionals licensed to practice medicine or osteopathy and of such other licensed health professionals (including dentists, optometrists, podiatrists, and psychologists) as are necessary for the provision of health services for which the group is responsible;

(B) a majority of the members of which are licensed to practice medicine or osteopathy; and

(C) the members of which (i) as their principal professional activity engage in the coordinated practice of their profession and as a group responsibility have substantial responsibility for the delivery of health services to members of a health maintenance organization, except that this clause does not apply before the end of the forty-eight month period beginning after the month in which the health maintenance organization¹ becomes a qualified health maintenance organization as defined in section 300e-9(d)² of this title, or as authorized

¹ So in original. Probably should be "organization".

² See References in Text note below.

by the Secretary in accordance with regulations that take into consideration the unusual circumstances of the group; (ii) pool their income from practice as members of the group and distribute it among themselves according to a prearranged salary or drawing account or other similar plan unrelated to the provision of specific health services; (iii) share medical and other records and substantial portions of major equipment and of professional, technical, and administrative staff; (iv) arrange for and encourage continuing education in the field of clinical medicine and related areas for the members of the group; and (v) establish an arrangement whereby a member's enrollment status is not known to the health professional who provides health services to the member.

(5) The term "individual practice association" means a partnership, corporation, association, or other legal entity which has entered into a services arrangement (or arrangements) with persons who are licensed to practice medicine, osteopathy, dentistry, podiatry, optometry, psychology, or other health profession in a State and a majority of whom are licensed to practice medicine or osteopathy. Such an arrangement shall provide—

(A) that such persons shall provide their professional services in accordance with a compensation arrangement established by the entity; and

(B) to the extent feasible, for the sharing by such persons of medical and other records, equipment, and professional, technical, and administrative staff.

(6) The term "health systems agency" means an entity which is designated in accordance with section 300f-4 of this title.

(7) The term "medically underserved population" means the population of an urban or rural area designated by the Secretary as an area with a shortage of personal health services or a population group designated by the Secretary as having a shortage of such services. Such a designation may be made by the Secretary only after consideration of the comments (if any) of (A) each State health planning and development agency which covers (in whole or in part) such urban or rural area or the area in which such population group resides, and (B) each health systems agency designated for a health service area which covers (in whole or in part) such urban or rural area or the area in which such population group resides.

(8)(A) The term "community rating system" means the systems, described in subparagraphs (B) and (C), of fixing rates of payments for health services. A health maintenance organization may fix its rates of payments under the system described in subparagraph (B) or (C) or under both such systems, but a health maintenance organization may use only one such system for fixing its rates of payments for any one group.

(B) A system of fixing rates of payment for health services may provide that the rates shall be fixed on a per-person or per-family basis and may authorize the rates to vary with the number of persons in a family, but, except as authorized in subparagraph (D), such rates must be

equivalent for all individuals and for all families of similar composition.

(C) A system of fixing rates of payment for health services may provide that the rates shall be fixed for individuals and families by groups. Except as authorized in subparagraph (D), such rates must be equivalent for all individuals in the same group and for all families of similar composition in the same group. If a health maintenance organization is to fix rates of payment for individuals and families by groups, it shall—

(i)(I) classify all of the members of the organization into classes based on factors which the health maintenance organization determines predict the differences in the use of health services by the individuals or families in each class and which have not been disapproved by the Secretary,

(II) determine its revenue requirements for providing services to the members of each class established under subclause (I), and

(III) fix the rates of payments for the individuals and families of a group on the basis of a composite of the organization's revenue requirements determined under subclause (II) for providing services to them as members of the classes established under subclause (I), or

(ii) fix the rates of payments for the individuals and families of a group on the basis of the organization's revenue requirements for providing services to the group, except that the rates of payments for the individuals and families of a group of less than 100 persons may not be fixed at rates greater than 110 percent of the rate that would be fixed for such individuals and families under subparagraph (B) or clause (i) of this subparagraph.

The Secretary shall review the factors used by each health maintenance organization to establish classes under clause (i). If the Secretary determines that any such factor may not reasonably be used to predict the use of the health services by individuals and families, the Secretary shall disapprove such factor for such purpose. If a health maintenance organization is to fix rates of payment for a group under clause (ii), it shall, upon request of the entity with which it contracts to provide services to such group, disclose to that entity the method and data used in calculating the rates of payment.

(D) The following differentials in rates of payments may be established under the systems described in subparagraphs (B) and (C):

(i) Nominal differentials in such rates may be established to reflect differences in marketing costs and the different administrative costs of collecting payments from the following categories of members:

(I) Individual members (including their families).

(II) Small groups of members (as determined under regulations of the Secretary).

(III) Large groups of members (as determined under regulations of the Secretary).

(ii) Nominal differentials in such rates may be established to reflect the compositing of the rates of payment in a systematic manner to accommodate group purchasing practices of the various employers.

(iii) Differentials in such rates may be established for members enrolled in a health maintenance organization pursuant to a contract with a governmental authority under section 1079 or 1086 of title 10 or under any other governmental program (other than the health benefits program authorized by chapter 89 of title 5) or any health benefits program for employees of States, political subdivision of States, and other public entities.

(9) The term "non-metropolitan area" means an area no part of which is within an area designated as a standard metropolitan statistical area by the Office of Management and Budget and which does not contain a city whose population exceeds fifty thousand individuals.

(July 1, 1944, ch. 373, title XIII, §1302, as added Pub. L. 93-222, §2, Dec. 29, 1973, 87 Stat. 917; amended Pub. L. 94-460, title I, §§102(b), 104, 105(b), (c), 106, 117(b)(1), (2), Oct. 8, 1976, 90 Stat. 1946-1948, 1955; Pub. L. 95-559, §11(e), Nov. 1, 1978, 92 Stat. 2139; Pub. L. 97-35, title IX, §942(f)-(j), Aug. 13, 1981, 95 Stat. 574, 575; Pub. L. 97-414, §9(c), Jan. 4, 1983, 96 Stat. 2064; Pub. L. 99-660, title VIII, §§812(a), 814, Nov. 14, 1986, 100 Stat. 3801, 3802; Pub. L. 100-517, §6(b), Oct. 24, 1988, 102 Stat. 2579.)

REFERENCES IN TEXT

Section 300e-9(d) of this title, referred to in par. (4)(C), was redesignated section 300e-9(c) of this title by Pub. L. 100-517, §7(b), Oct. 24, 1988, 102 Stat. 2580.

AMENDMENTS

1988—Par. (8)(C). Pub. L. 100-517, §6(b)(1), amended third sentence generally. Prior to amendment, third sentence read as follows: "If a health maintenance organization is to fix rates of payment for individuals and families by groups, it shall—

"(i) classify all of the members of the organization into classes based on factors which the health maintenance organization determines predict the differences in the use of health services by the individuals or families in each class and which have not been disapproved by the Secretary.

"(ii) determine its revenue requirements for providing services to the members of each class established under clause (i), and

"(iii) fix the rates of payment for the individuals and families of a group on the basis of a composite of the organization's revenue requirements determined under clause (ii) for providing services to them as members of the classes established under clause (i)." Pub. L. 100-517, §6(b)(2), inserted at end "If a health maintenance organization is to fix rates of payment for a group under clause (ii), it shall, upon request of the entity with which it contracts to provide services to such group, disclose to that entity the method and data used in calculating the rates of payment."

1986—Par. (1). Pub. L. 99-660, §814(a), inserted "psychologist," in two places in fourth sentence.

Pub. L. 99-660, §812(a), (b)(1), temporarily inserted "Such term includes a health service directly associated with an organ transplant only if such organ transplant was required to be included in basic health services on April 15, 1985." in closing provisions. See Effective and Termination Dates of 1986 Amendment note below.

Par. (2). Pub. L. 99-660, §814(a), inserted "psychologist," in two places.

Par. (4)(A). Pub. L. 99-660, §814(b), substituted "podiatrists, and psychologists" for "and podiatrists".

Par. (5). Pub. L. 99-660, §814(c), inserted "psychology,".

1983—Par. (5)(B). Pub. L. 97-414 amended directory language of Pub. L. 97-35, §942(i), to correct a typo-

graphical error, and did not involve any change in text. See 1981 Amendment note below.

1981—Par. (1). Pub. L. 97-35, §942(f), struck out provisions authorizing health maintenance organizations to maintain, etc., drug use profiles of members.

Par. (2). Pub. L. 97-35, §942(g), substituted provisions to include services not included under par. (1), for provisions enumerating specific services, substituted "health service provided by a physician" for "service of a physician described in the preceding sentence", and struck out provisions authorizing health maintenance organizations to maintain, etc., drug use profiles of members.

Par. (4)(C)(i). Pub. L. 97-35, §942(h), inserted provisions relating to applicability to qualified organizations.

Par. (5)(B). Pub. L. 97-35, §942(i), as amended by Pub. L. 97-414, §9(c), struck out "(i)" after "feasible", and struck out cl. (ii) which related to continuing education.

Par. (8). Pub. L. 97-35, §942(j), reorganized and restructured provisions and, among many changes, provided for determinations based upon subpars. (B) and (C), and set out determinations respecting differentials contained in former subpars. (B) and (C) as subpar. (D).

1978—Par. (1). Pub. L. 95-559 inserted provisions to exclude a health service which the Secretary, upon application of a health maintenance organization, determines is unusual and infrequently provided and not necessary for protection of individual health and that the Secretary publish in Federal Register each determination made by him under preceding sentence.

1976—Par. (1). Pub. L. 94-460, §104(a), substituted reference to immunization, well-child care from birth, periodic health evaluations for adults, and children's ear examinations conducted to determine need for hearing correction for reference to preventive dental care for children in (H) and, in the provisions following subpar. (H), inserted reference to "other health care personnel".

Par. (2). Pub. L. 94-460, §104(b), substituted "basic health service" for "basic health service under paragraph (1)(A) or (1)(H)" in subpars. (B) and (C), added subpar. (G), and inserted reference to "other health care personnel" in provisions following subpar. (G).

Par. (4)(C). Pub. L. 94-460, §§102(b)(1), 106, substituted "as their principal professional activity engage in the coordinated practice of their profession and as a group responsibility have substantial responsibility for the delivery of health services to members of a health maintenance organization" for "as their principal professional activity and as a group responsibility engage in the coordinated practice of their profession for a health maintenance organization" in cl. (i), substituted "similar plan unrelated to the provision of specific health services" for "plan" in cl. (ii), struck out former cl. (iv) which covered the utilization of additional professional personnel, allied health professions personnel, and other health personnel as are available and appropriate for the effective and efficient delivery of the services of the members of the group, redesignated former cl. (v) as (iv), and added cl. (v).

Par. (5)(B). Pub. L. 94-460, §102(b)(2), struck out former cl. (i) which covered the utilization of additional professional personnel, allied health professions personnel, and other personnel as are available and appropriate for the effective and efficient delivery of the services of the persons who are parties to the arrangement, and redesignated former cls. (ii) and (iii) as (i) and (ii), respectively.

Par. (6). Pub. L. 94-460, §117(b)(1), substituted provisions defining "health systems agency" for provisions defining "section 314(a) State health planning agency" and "section 314(b) areawide health planning agency".

Par. (7). Pub. L. 94-460, §117(b)(2), substituted "State health planning and development agency which" for "section 314(a) State health planning agency whose section 314(a) plan" and "health systems agency designated for a health service area which" for "section 314(b) areawide health planning agency whose section 314(b) plan".

Par. (8). Pub. L. 94-460, §105(b), (c), substituted "to reflect differences in marketing costs and the different administrative costs" for "to reflect the different administrative costs" in subpar. (A) preceding cl. (i), added subpar. (B), and redesignated former subpar. (B) as (C).

EFFECTIVE AND TERMINATION DATES OF 1986
AMENDMENT

Pub. L. 99-660, title VIII, §812(b)(1), Nov. 14, 1986, 100 Stat. 3801, which provided that amendment by subsection (a), amending this section, was to take effect on Oct. 1, 1985, and was to cease to be in effect on Apr. 1, 1988, was repealed by Pub. L. 100-517, §6(a), Oct. 24, 1988, 102 Stat. 2579.

Pub. L. 99-660, title VIII, §815, Nov. 14, 1986, 100 Stat. 3802, provided that:

"(a) Except as provided in subsection (b) and section 812(b) [enacting provisions set out as notes above and below], this title and the amendments made by this title [amending this section and sections 300e-4, 300e-5 to 300e-10, 300e-16, and 300e-17 of this title, repealing sections 300e-2, 300e-3, and 300e-4a of this title, and enacting provisions set out as notes under this section and sections 201, 300e, 300e-4, and 300e-5 of this title] shall take effect on October 1, 1985.

"(b) Section 813 [enacting provisions set out as a note under section 300e of this title] shall take effect on the date of enactment of this Act [Nov. 14, 1986]."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-460 effective Oct. 8, 1976, except that amendment of pars. (1) and (2) of this section by section 104 of Pub. L. 94-460 and the amendment of pars. (4)(C) and (5)(B) of this section by sections 102 and 106 of Pub. L. 94-460 applicable with respect to grants, contracts, loans, and loan guarantees made under sections 300e-2, 300e-3, and 300e-4 of this title for fiscal years beginning after Sept. 30, 1976, applicable with respect to health benefit plans offered under section 300e-9 of this title after Sept. 30, 1976, and effective for purposes of section 300e-11 of this title on Oct. 1, 1976, see section 118 of Pub. L. 94-460, set out as a note under section 300e of this title.

CONSTRUCTION

Pub. L. 99-660, title VIII, §816, Nov. 14, 1986, 100 Stat. 3802, provided that: "The provisions of this title and of the amendments made by this title [amending this section and sections 300e-4, 300e-5 to 300e-10, 300e-16, and 300e-17 of this title, repealing sections 300e-2, 300e-3, and 300e-4a of this title, and enacting provisions set out as notes under this section and sections 201, 300e, 300e-4, and 300e-5 of this title] do not authorize the appropriation of any funds for fiscal year 1986."

BASIC HEALTH SERVICE STATUS OF CERTAIN ORGAN
TRANSPLANT SERVICES AFTER APRIL 1, 1988

Pub. L. 99-660, title VIII, §812(b)(2), Nov. 14, 1986, 100 Stat. 3801, which provided that after Apr. 1, 1988, for purposes of this subchapter, no health service directly associated with an organ transplant was to be considered to be a basic health service if such service would otherwise have been added as a basic health service between Apr. 15, 1985, and Apr. 1, 1988, was repealed by Pub. L. 100-517, §6(a), Oct. 24, 1988, 102 Stat. 2579.

REPORTS RESPECTING MEDICALLY UNDERSERVED AREAS
AND POPULATION GROUPS AND NON-METROPOLITAN
AREAS

Pub. L. 93-222, §5, Dec. 29, 1973, 87 Stat. 935, directed Secretary of Health, Education, and Welfare to report to Congress the criteria used in the designation of medically underserved areas and population groups for purposes of par. (7) of this section by Dec. 29, 1973, and report to Congress the areas and population groups designated under par. (7) of this section, the comments of State and areawide health planning agencies, and areas which meet the definitional standards of par. (9) of this

section for non-metropolitan areas by Dec. 29, 1974, and that the Office of Management and Budget may review such reports before their submission to Congress.

§§ 300e-2, 300e-3. Repealed. Pub. L. 99-660, title
VIII, § 803(a), Nov. 14, 1986, 100 Stat. 3799

Section 300e-2, act July 1, 1944, ch. 373, title XIII, §1303, as added Dec. 29, 1973, Pub. L. 93-222, §2, 87 Stat. 920; amended Oct. 8, 1976, Pub. L. 94-460, title I, §§107(a), 109(d)(1), 117(b)(3), 90 Stat. 1948, 1950, 1955; Aug. 13, 1981, Pub. L. 97-35, title IX, §947(a), 95 Stat. 577, provided for grants and contracts for feasibility surveys.

Section 300e-3, act July 1, 1944, ch. 373, title XIII, §1304, as added Dec. 29, 1973, Pub. L. 93-222, §2, 87 Stat. 921; amended Apr. 21, 1976, Pub. L. 94-273, §40, 90 Stat. 381; Oct. 8, 1976, Pub. L. 94-460, title I, §§107(b), 108(a), (b), (d)(1), 109(d)(2), (3), (e), 113(a), 117(b)(4), 90 Stat. 1948-1950, 1953, 1955; Nov. 1, 1978, Pub. L. 95-559, §§2(a), 3(a)-(c), 6, 92 Stat. 2131, 2134; July 10, 1979, Pub. L. 96-32, §2(a), 93 Stat. 82; Aug. 13, 1981, Pub. L. 97-35, title IX, §941(c), 947(b), 95 Stat. 573, 577, provided for grants, contracts, and loan guarantees for planning and for initial development costs.

EFFECTIVE DATE OF REPEAL

Repeal not applicable to any grant made or contract entered into under this subchapter before Oct. 1, 1985, see section 803(c) of Pub. L. 99-660, set out as an Effective Date of 1986 Amendment note under section 300e-5 of this title.

Repeal effective Oct. 1, 1985, see section 815(a) of Pub. L. 99-660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e-1 of this title.

§ 300e-4. Loans and loan guarantees for initial
operation costs

(a) Authority

The Secretary may—

(1) make loans to public or private health maintenance organizations to assist them in meeting the amount by which their costs of operation during a period not to exceed the first sixty months of their operation exceed their revenues in that period;

(2) make loans to public or private health maintenance organizations to assist them in meeting the amount by which their costs of operation, which the Secretary determines are attributable to significant expansion in their membership or area served and which are incurred during a period not to exceed the first sixty months of their operation after such expansion, exceed their revenues in that period which the Secretary determines are attributable to such expansion; and

(3) guarantee to non-Federal lenders payment of the principal of and the interest on loans made to private health maintenance organizations for the amounts referred to in paragraphs (1) and (2).

No loan or loan guarantee may be made under this subsection for the costs of operation of a health maintenance organization unless the Secretary determines that the organization has made all reasonable attempts to meet such costs, and unless the Secretary has made a grant or loan to, entered into a contract with, or guaranteed a loan for, the organization in fiscal year 1981, 1982, 1983, 1984, or 1985 under this section or section 300e-3(b)¹ of this title (as in effect before October 1, 1985).

¹ See References in Text note below.