

(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 to the district court of the United States for the judicial district in which the principal or headquarters office of the agency responsible for administering the program is located.

(Aug. 14, 1935, ch. 531, title XI, §1123A, formerly §1123, as added Pub. L. 103-432, title II, §203(a), Oct. 31, 1994, 108 Stat. 4454; renumbered §1123A, Pub. L. 104-193, title V, §504, Aug. 22, 1996, 110 Stat. 2278; amended Pub. L. 109-432, div. B, title IV, §405(c)(1)(B)(ii), Dec. 20, 2006, 120 Stat. 2999.)

CODIFICATION

Section was formerly classified to section 1320a-1a of this title prior to renumbering by Pub. L. 104-193.

AMENDMENTS

2006—Subsec. (b)(2). Pub. L. 109-432 inserted “(which shall include determining whether the State program is in conformity with the requirement of section 671(a)(27) of this title)” after “review”.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-432 effective on the date that is 6 months after Dec. 20, 2006, see section 405(c)(1)(B)(iii) of Pub. L. 109-432, set out as a note under section 671 of this title.

EFFECTIVE DATE

Pub. L. 103-432, title II, §203(c)(1), Oct. 31, 1994, 108 Stat. 4456, provided that: “The amendment made by subsection (a) [enacting this section] shall take effect on the date of the enactment of this Act [Oct. 31, 1994].”

REGULATIONS

Pub. L. 103-432, title II, §203(c)(3), Oct. 31, 1994, 108 Stat. 4456, required the regulations referred to in subsection (a) of this section to be promulgated no later than July 1, 1995, to take effect on Apr. 1, 1996.

§ 1320a-3. Disclosure of ownership and related information; procedure; definitions; scope of requirements

(a) In general

(1) The Secretary shall by regulation or by contract provision provide that each disclosing entity (as defined in paragraph (2)) shall—

(A) as a condition of the disclosing entity's participation in, or certification or recertification under, any of the programs established by subchapters V, XVIII, and XIX, or

(B) as a condition for the approval or renewal of a contract or agreement between the disclosing entity and the Secretary or the appropriate State agency under any of the programs established under subchapters V, XVIII, and XIX,

supply the Secretary or the appropriate State agency with full and complete information as to the identity of each person with an ownership or control interest (as defined in paragraph (3)) in the entity or in any subcontractor (as defined by the Secretary in regulations) in which the entity directly or indirectly has a 5 per centum or more ownership interest and supply the Secretary with the¹ both the employer identification number (assigned pursuant to section 6109 of the Internal Revenue Code of 1986) and social security account number (assigned under section 405(c)(2)(B) of this title) of the disclosing entity, each person with an ownership or control interest (as defined in subsection (a)(3)), and any subcontractor in which the entity directly or indirectly has a 5 percent or more ownership interest.

(2) As used in this section, the term “disclosing entity” means an entity which is—

(A) a provider of services (as defined in section 1395x(u) of this title, other than a fund), an independent clinical laboratory, a renal disease facility, a managed care entity, as defined in section 1396u-2(a)(1)(B) of this title, or a health maintenance organization (as defined in section 300e(a) of this title);

(B) an entity (other than an individual practitioner or group of practitioners) that fur-

¹ So in original. The word “the” probably should not appear.

nishes, or arranges for the furnishing of, items or services with respect to which payment may be claimed by the entity under any plan or program established pursuant to subchapter V or under a State plan approved under subchapter XIX; or

(C) a carrier or other agency or organization that is acting as a fiscal intermediary or agent with respect to one or more providers of services (for purposes of part A or part B of subchapter XVIII, or both, or for purposes of a State plan approved under subchapter XIX) pursuant to (i) an agreement under section 1395h of this title, (ii) a contract under section 1395u of this title, or (iii) an agreement with a single State agency administering or supervising the administration of a State plan approved under subchapter XIX.

(3) As used in this section, the term “person with an ownership or control interest” means, with respect to an entity, a person who—

(A)(i) has directly or indirectly (as determined by the Secretary in regulations) an ownership interest of 5 per centum or more in the entity; or

(ii) is the owner of a whole or part interest in any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by the entity or any of the property or assets thereof, which whole or part interest is equal to or exceeds 5 per centum of the total property and assets of the entity; or

(B) is an officer or director of the entity, if the entity is organized as a corporation; or

(C) is a partner in the entity, if the entity is organized as a partnership.

(b) Other disclosing entities

To the extent determined to be feasible under regulations of the Secretary, a disclosing entity shall also include in the information supplied under subsection (a)(1), with respect to each person with an ownership or control interest in the entity, the name of any other disclosing entity with respect to which the person is a person with an ownership or control interest.

(c) Required disclosure of ownership and additional disclosable parties information

(1) Disclosure

A facility shall have the information described in paragraph (2) available—

(A) during the period beginning on March 23, 2010, and ending on the date such information is made available to the public under section 6101(b) of the Patient Protection and Affordable Care Act for submission to the Secretary, the Inspector General of the Department of Health and Human Services, the State in which the facility is located, and the State long-term care ombudsman in the case where the Secretary, the Inspector General, the State, or the State long-term care ombudsman requests such information; and

(B) beginning on the effective date of the final regulations promulgated under paragraph (3)(A), for reporting such information in accordance with such final regulations.

Nothing in subparagraph (A) shall be construed as authorizing a facility to dispose of or

delete information described in such subparagraph after the effective date of the final regulations promulgated under paragraph (3)(A).

(2) Information described

(A) In general

The following information is described in this paragraph:

(i) The information described in subsections (a) and (b), subject to subparagraph (C).

(ii) The identity of and information on—

(I) each member of the governing body of the facility, including the name, title, and period of service of each such member;

(II) each person or entity who is an officer, director, member, partner, trustee, or managing employee of the facility, including the name, title, and period of service of each such person or entity; and

(III) each person or entity who is an additional disclosable party of the facility.

(iii) The organizational structure of each additional disclosable party of the facility and a description of the relationship of each such additional disclosable party to the facility and to one another.

(B) Special rule where information is already reported or submitted

To the extent that information reported by a facility to the Internal Revenue Service on Form 990, information submitted by a facility to the Securities and Exchange Commission, or information otherwise submitted to the Secretary or any other Federal agency contains the information described in clauses (i), (ii), or (iii) of subparagraph (A), the facility may provide such Form or such information submitted to meet the requirements of paragraph (1).

(C) Special rule

In applying subparagraph (A)(i)—

(i) with respect to subsections (a) and (b), “ownership or control interest” shall include direct or indirect interests, including such interests in intermediate entities; and

(ii) subsection (a)(3)(A)(ii) shall include the owner of a whole or part interest in any mortgage, deed of trust, note, or other obligation secured, in whole or in part, by the entity or any of the property or assets thereof, if the interest is equal to or exceeds 5 percent of the total property or assets of the entirety.

(3) Reporting

(A) In general

Not later than the date that is 2 years after March 23, 2010, the Secretary shall promulgate final regulations requiring, effective on the date that is 90 days after the date on which such final regulations are published in the Federal Register, a facility to report the information described in paragraph (2) to the Secretary in a standardized

format, and such other regulations as are necessary to carry out this subsection. Such final regulations shall ensure that the facility certifies, as a condition of participation and payment under the program under subchapter XVIII or XIX, that the information reported by the facility in accordance with such final regulations is, to the best of the facility's knowledge, accurate and current.

(B) Guidance

The Secretary shall provide guidance and technical assistance to States on how to adopt the standardized format under subparagraph (A).

(4) No effect on existing reporting requirements

Nothing in this subsection shall reduce, diminish, or alter any reporting requirement for a facility that is in effect as of March 23, 2010.

(5) Definitions

In this subsection:

(A) Additional disclosable party

The term "additional disclosable party" means, with respect to a facility, any person or entity who—

(i) exercises operational, financial, or managerial control over the facility or a part thereof, or provides policies or procedures for any of the operations of the facility, or provides financial or cash management services to the facility;

(ii) leases or subleases real property to the facility, or owns a whole or part interest equal to or exceeding 5 percent of the total value of such real property; or

(iii) provides management or administrative services, management or clinical consulting services, or accounting or financial services to the facility.

(B) Facility

The term "facility" means a disclosing entity which is—

(i) a skilled nursing facility (as defined in section 1395i-3(a) of this title); or

(ii) a nursing facility (as defined in section 1396r(a) of this title).

(C) Managing employee

The term "managing employee" means, with respect to a facility, an individual (including a general manager, business manager, administrator, director, or consultant) who directly or indirectly manages, advises, or supervises any element of the practices, finances, or operations of the facility.

(D) Organizational structure

The term "organizational structure" means, in the case of—

(i) a corporation, the officers, directors, and shareholders of the corporation who have an ownership interest in the corporation which is equal to or exceeds 5 percent;

(ii) a limited liability company, the members and managers of the limited liability company (including, as applicable, what percentage each member and manager has of the ownership interest in the limited liability company);

(iii) a general partnership, the partners of the general partnership;

(iv) a limited partnership, the general partners and any limited partners of the limited partnership who have an ownership interest in the limited partnership which is equal to or exceeds 10 percent;

(v) a trust, the trustees of the trust;

(vi) an individual, contact information for the individual; and

(vii) any other person or entity, such information as the Secretary determines appropriate.

(Aug. 14, 1935, ch. 531, title XI, §1124, as added Pub. L. 95-142, §3(a)(1), Oct. 25, 1977, 91 Stat. 1177; amended Pub. L. 96-499, title IX, §912(a), Dec. 5, 1980, 94 Stat. 2619; Pub. L. 97-35, title XXIII, §2353(i), Aug. 13, 1981, 95 Stat. 872; Pub. L. 100-93, §11, Aug. 18, 1987, 101 Stat. 697; Pub. L. 105-33, title IV, §§4313(a), 4707(c), Aug. 5, 1997, 111 Stat. 388, 506; Pub. L. 111-148, title VI, §6101(a), Mar. 23, 2010, 124 Stat. 699.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (a)(1), is classified generally to Title 26, Internal Revenue Code.

Section 6101(b) of the Patient Protection and Affordable Care Act, referred to in subsec. (c)(1)(A), is section 6101(b) of Pub. L. 111-148, which is set out as a note below.

AMENDMENTS

2010—Subsec. (c). Pub. L. 111-148 added subsec. (c).

1997—Subsec. (a)(1). Pub. L. 105-33, §4313(a), inserted before period at end of concluding provisions "and supply the Secretary with the both the employer identification number (assigned pursuant to section 6109 of the Internal Revenue Code of 1986) and social security account number (assigned under section 405(c)(2)(B) of this title) of the disclosing entity, each person with an ownership or control interest (as defined in subsection (a)(3)), and any subcontractor in which the entity directly or indirectly has a 5 percent or more ownership interest." The insertion was made to reflect the probable intent of Congress, in the absence of closing quotations designating the provisions to be inserted.

Subsec. (a)(2)(A). Pub. L. 105-33, §4707(c), inserted "a managed care entity, as defined in section 1396u-2(a)(1)(B) of this title," after "renal disease facility".

1987—Subsec. (a)(3)(A)(ii). Pub. L. 100-93 struck out "\$25,000 or" after "exceeds".

1981—Subsec. (a)(1). Pub. L. 97-35, §2353(i)(1), substituted in subpars. (A) and (B) "and XIX" for "XIX, and XX".

Subsec. (a)(2)(D). Pub. L. 97-35, §2353(i)(2)(C), struck out subpar. (D) which included within term "disclosing entity" an entity, other than an individual practitioner or group of practitioners, that furnishes, or arranges for the furnishing of, health related services with respect to which payment may be claimed by the entity under a State plan or program approved under subchapter XX of this chapter.

1980—Subsec. (a)(3)(A)(ii). Pub. L. 96-499 substituted "of a whole or part interest" for "(in whole or in part) of an interest of 5 per centum or more" and inserted "which whole or part interest is equal to or exceeds \$25,000 or 5 per centum of the total property and assets of the entity".

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-33, title IV, §4313(e), Aug. 5, 1997, 111 Stat. 389, provided that:

"(1) DISCLOSURE REQUIREMENTS.—The amendment made by subsection (a) [amending this section] shall

apply to the application of conditions of participation, and entering into and renewal of contracts and agreements, occurring more than 90 days after the date of submission of the report under subsection (d) [set out as a note below].

“(2) OTHER PROVIDERS.—The amendments made by subsection (b) [amending section 1320a-3a of this title] shall apply to payment for items and services furnished more than 90 days after the date of submission of such report.”

Amendment by section 4707(c) of Pub. L. 105-33 effective Aug. 5, 1997, and applicable to contracts entered into or renewed on or after Oct. 1, 1997, see section 4710 of Pub. L. 105-33, set out as a note under section 1396b of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100-93, set out as a note under section 1320a-7 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97-35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE

Pub. L. 95-142, §3(e), Oct. 25, 1977, 91 Stat. 1179, provided that: “The amendment made by subsection (a)(1) [enacting this section] shall apply with respect to certifications and recertifications made (and participation in the programs established by titles V, XVIII, XIX, and XX of the Social Security Act [42 U.S.C. 701 et seq., 1395 et seq., 1396 et seq., 1397 et seq.] pursuant to certifications and recertifications made), and fiscal intermediary or agent agreements or contracts entered into or renewed, on and after the date of the enactment of this Act [Oct. 25, 1977]. The remaining amendments made by this section [amending sections 1395x and 1395cc of this title] shall take effect on the date of the enactment of this Act [Oct. 25, 1977]; except that the amendments made by subsections (c) and (d) [amending sections 1396a, 1396b, 1397a, and 1397b of this title] shall become effective January 1, 1978.”

PUBLIC AVAILABILITY OF INFORMATION

Pub. L. 111-148, title VI, §6101(b), Mar. 23, 2010, 124 Stat. 702, provided that: “Not later than the date that is 1 year after the date on which the final regulations promulgated under section 1124(c)(3)(A) of the Social Security Act [42 U.S.C. 1320a-3(c)(3)(A)], as added by subsection (a), are published in the Federal Register, the Secretary of Health and Human Services shall make the information reported in accordance with such final regulations available to the public in accordance with procedures established by the Secretary.”

REPORT ON CONFIDENTIALITY OF SOCIAL SECURITY ACCOUNT NUMBERS

Pub. L. 105-33, title IV, §4313(d), Aug. 5, 1997, 111 Stat. 389, provided that: “Before the amendments made by this section [amending this section and section 1320a-3a of this title] may become effective, the Secretary of Health and Human Services shall submit to Congress a report on steps the Secretary has taken to assure the confidentiality of social security account numbers that will be provided to the Secretary under such amendments.”

§ 1320a-3a. Disclosure requirements for other providers under part B of Medicare

(a) Disclosure required to receive payment

No payment may be made under part B of subchapter XVIII for items or services furnished by

any disclosing part B provider unless such provider has provided the Secretary with full and complete information—

(1) on the identity of each person with an ownership or control interest in the provider or in any subcontractor (as defined by the Secretary in regulations) in which the provider directly or indirectly has a 5 percent or more ownership interest;

(2) with respect to any person identified under paragraph (1) or any managing employee of the provider—

(A) on the identity of any other entities providing items or services for which payment may be made under subchapter XVIII with respect to which such person or managing employee is a person with an ownership or control interest at the time such information is supplied or at any time during the 3-year period ending on the date such information is supplied, and

(B) as to whether any penalties, assessments, or exclusions have been assessed against such person or managing employee under section 1320a-7, 1320a-7a, or 1320a-7b of this title; and

(3) including the employer identification number (assigned pursuant to section 6109 of the Internal Revenue Code of 1986) and social security account number (assigned under section 405(c)(2)(B) of this title) of the disclosing part B provider and any person, managing employee, or other entity identified or described under paragraph (1) or (2).

(b) Updates to information supplied

A disclosing part B provider shall notify the Secretary of any changes or updates to the information supplied under subsection (a) not later than 180 days after such changes or updates take effect.

(c) Verification

(1) Transmittal by HHS

The Secretary shall transmit—

(A) to the Commissioner of Social Security information concerning each social security account number (assigned under section 405(c)(2)(B) of this title), and

(B) to the Secretary of the Treasury information concerning each employer identification number (assigned pursuant to section 6109 of the Internal Revenue Code of 1986),

supplied to the Secretary pursuant to subsection (a)(3) or section 1320a-3(c)¹ of this title to the extent necessary for verification of such information in accordance with paragraph (2).

(2) Verification

The Commissioner of Social Security and the Secretary of the Treasury shall verify the accuracy of, or correct, the information supplied by the Secretary to such official pursuant to paragraph (1), and shall report such verifications or corrections to the Secretary.

(3) Fees for verification

The Secretary shall reimburse the Commissioner and Secretary of the Treasury, at a rate

¹ See References in Text note below.