

(B) Alternative adjustments

The Secretary may, instead of making some or all of the reduction described in subparagraph (A), impose such other conditions or limitations with respect to the coverage of covered services (including limitations on new elections of coverage and new facilities) as may be appropriate to reduce the level of expenditures described in paragraph (1) to the trigger level.

(C) Trigger level

For purposes of this subsection—

(i) In general

Subject to adjustment under paragraph (3)(B), the “trigger level” for a year is the unadjusted trigger level described in clause (ii).

(ii) Unadjusted trigger level

The “unadjusted trigger level” for—

(I) fiscal year 1998, is \$20,000,000, or

(II) a succeeding fiscal year is the amount specified under this clause for the previous fiscal year increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) for the 12-month period ending with July preceding the beginning of the fiscal year.

(D) Prohibition of administrative and judicial review

There shall be no administrative or judicial review under section 1395ff of this title, 1395oo of this title, or otherwise of the estimation of expenditures under subparagraph (A) or the application of reduction amounts under subparagraph (B).

(E) Effect on billing

Notwithstanding any other provision of this subchapter, in the case of a reduction in payment provided under this subsection for services of a religious nonmedical health care institution provided to an individual, the amount that the institution is otherwise permitted to charge the individual for such services is increased by the amount of such reduction.

(3) Monitoring expenditure level**(A) In general**

The Secretary shall monitor the expenditure level described in paragraph (2)(A) for each fiscal year (beginning with fiscal year 1999).

(B) Adjustment in trigger level**(i) In general**

If the Secretary determines that such level for a fiscal year exceeded, or was less than, the trigger level for that fiscal year, then, subject to clause (ii), the trigger level for the succeeding fiscal year shall be reduced, or increased, respectively, by the amount of such excess or deficit.

(ii) Limitation on carryforward

In no case may the increase effected under clause (i) for a fiscal year exceed \$50,000,000.

(d) Sunset

If the Secretary determines that the level of expenditures described in subsection (c)(1) for 3 consecutive fiscal years (with the first such year being not earlier than fiscal year 2002) exceeds the trigger level for such expenditures for such years (as determined under subsection (c)(2)), benefits shall be paid under this part for services described in subsection (a) and furnished on or after the first January 1 that occurs after such 3 consecutive years only with respect to an individual who has an election in effect under subsection (b) as of such January 1 and only during the duration of such election.

(e) Annual report

At the beginning of each fiscal year (beginning with fiscal year 1999), the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate an annual report on coverage and expenditures for services described in subsection (a) under this part and under State plans under subchapter XIX. Such report shall include—

(1) level of expenditures described in subsection (c)(1) for the previous fiscal year and estimated for the fiscal year involved;

(2) trends in such level; and

(3) facts and circumstances of any significant change in such level from the level in previous fiscal years.

(Aug. 14, 1935, ch. 531, title XVIII, §1821, as added Pub. L. 105-33, title IV, §4454(a)(2), Aug. 5, 1997, 111 Stat. 428; amended Pub. L. 108-173, title VII, §706(a), Dec. 8, 2003, 117 Stat. 2339.)

AMENDMENTS

2003—Subsec. (a). Pub. L. 108-173, §706(a)(1), inserted “and for home health services furnished an individual by a religious nonmedical health care institution” after “religious nonmedical health care institution” in introductory provisions.

Subsec. (a)(2). Pub. L. 108-173, §706(a)(2), substituted “, extended care services, or home health services” for “or extended care services” and inserted “, or receiving services from a home health agency,” after “skilled nursing facility”.

EFFECTIVE DATE

Pub. L. 105-33, title IV, §4454(d), Aug. 5, 1997, 111 Stat. 431, provided that: “The amendments made by this section [enacting this section and amending sections 1320a-1, 1320c-11, 1395x, 1396a, and 1396g of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997] and shall apply to items and services furnished on or after such date. By not later than July 1, 1998, the Secretary of Health and Human Services shall first issue regulations to carry out such amendments. Such regulations may be issued so they are effective on an interim basis pending notice and opportunity for public comment. For periods before the effective date of such regulations, such regulations shall recognize elections entered into in good faith in order to comply with the requirements of section 1821(b) of the Social Security Act [42 U.S.C. 1395i-5(b)].”

§ 1395i-6. Hospice program survey and enforcement procedures**(a) Surveys****(1) Frequency**

Any entity that is certified as a hospice program (as defined in section 1395x(dd)(2)) of this

title shall be subject to a standard survey by an appropriate State or local survey agency, or an approved accreditation agency, as determined by the Secretary, not less frequently than once every 36 months.

(2) Public transparency of survey and certification information

(A) Submission of information to the Secretary

(i) In general

Each State or local survey agency, and each national accreditation body with respect to which the Secretary has made a finding under section 1395bb(a) of this title respecting the accreditation of a hospice program by such body, shall submit, in a form and manner, and at a time, specified by the Secretary for purposes of this paragraph, information respecting any survey or certification made with respect to a hospice program by such survey agency or body, as applicable. Such information shall include any inspection report made by such survey agency or body with respect to such survey or certification, any enforcement actions taken as a result of such survey or certification, and any other information determined appropriate by the Secretary.

(ii) Required inclusion of specified form

With respect to a survey under this subsection carried out by a national accreditation body described in clause (i) on or after October 1, 2021, information described in such clause shall include Form CMS-2567 (or a successor form), along with such additional information determined appropriate by such body.

(B) Public disclosure of information

Beginning not later than October 1, 2022, the Secretary shall publish the information submitted under subparagraph (A) on the public website of the Centers for Medicare & Medicaid Services in a manner that is prominent, easily accessible, readily understandable, and searchable. The Secretary shall provide for the timely update of such information so published.

(3) Consistency of surveys

Each State and the Secretary shall implement programs to measure and reduce inconsistency in the application of survey results among surveyors.

(4) Survey teams

(A) In general

In the case of a survey conducted under this subsection on or after October 1, 2021, by more than 1 individual, such survey shall be conducted by a multidisciplinary team of professionals (including a registered professional nurse).

(B) Prohibition of conflicts of interest

Beginning October 1, 2021, a State may not use as a member of a survey team under this subsection an individual who is serving (or has served within the previous 2 years) as a

member of the staff of, or as a consultant to, the program surveyed respecting compliance with the requirements of section 1395x(dd) of this title or who has a personal or familial financial interest in the program being surveyed.

(C) Training

The Secretary shall provide, not later than October 1, 2021, for the comprehensive training of State and Federal surveyors, and any surveyor employed by a national accreditation body described in paragraph (2)(A)(i), in the conduct of surveys under this subsection, including training with respect to the review of written plans for providing hospice care (as described in section 1395f(a)(7)(B) of this title). No individual shall serve as a member of a survey team with respect to a survey conducted on or after such date unless the individual has successfully completed a training and testing program in survey and certification techniques that has been approved by the Secretary.

(5) Funding

The Secretary shall provide for the transfer, from the Federal Hospital Insurance Trust Fund under section 1395i of this title to the Centers for Medicare & Medicaid Services Program Management Account, of \$10,000,000 for each fiscal year (beginning with fiscal year 2022) for purposes of carrying out this subsection and subsection (b). Sums so transferred shall remain available until expended. Any transfer pursuant to this paragraph shall be in addition to any transfer pursuant to section 3(a)(2) of the Improving Medicare Post-Acute Care Transformation Act of 2014.

(b) Special focus program

(1) In general

The Secretary shall conduct a special focus program for enforcement of requirements for hospice programs that the Secretary has identified as having substantially failed to meet applicable requirements of this chapter.

(2) Periodic surveys

Under such special focus program, the Secretary shall conduct surveys of each hospice program in the special focus program not less than once every 6 months.

(c) Enforcement

(1) Situations involving immediate jeopardy

If the Secretary determines on the basis of a standard survey or otherwise that a hospice program that is certified for participation under this subchapter is no longer in compliance with the requirements specified in section 1395x(dd) of this title and determines that the deficiencies involved immediately jeopardize the health and safety of the individuals to whom the program furnishes items and services, the Secretary shall take immediate action to ensure the removal of the jeopardy and correction of the deficiencies or terminate the certification of the program, and may provide, in addition, for 1 or more of the other remedies described in paragraph (5)(B).

(2) Situations not involving immediate jeopardy

If the Secretary determines on the basis of a standard survey or otherwise that a hospice program that is certified for participation under this subchapter is no longer in compliance with the requirements specified in section 1395x(dd) of this title and determines that the deficiencies involved do not immediately jeopardize the health and safety of the individuals to whom the program furnishes items and services, the Secretary may (for a period not to exceed 6 months) impose remedies developed pursuant to paragraph (5)(A), in lieu of terminating the certification of the program. If, after such a period of remedies, the program is still no longer in compliance with such requirements, the Secretary shall terminate the certification of the program.

(3) Penalty for previous noncompliance

If the Secretary determines that a hospice program that is certified for participation under this subchapter is in compliance with the requirements specified in section 1395x(dd) of this title but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under paragraph (5)(B)(i) for the days in which the Secretary finds that the program was not in compliance with such requirements.

(4) Option to continue payments for non-compliant hospice programs

The Secretary may continue payments under this subchapter with respect to a hospice program not in compliance with the requirements specified in section 1395x(dd) of this title over a period of not longer than 6 months, if—

(A) the State or local survey agency finds that it is more appropriate to take alternative action to assure compliance of the program with such requirements than to terminate the certification of the program;

(B) the program has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action; and

(C) the program agrees to repay to the Federal Government payments received under this subchapter during such period if the corrective action is not taken in accordance with the approved plan and timetable.

The Secretary shall establish guidelines for approval of corrective actions requested by hospice programs under this paragraph.

(5) Remedies

(A) Development

(i) In general

Not later than October 1, 2022, the Secretary shall develop and implement—

(I) a range of remedies to apply to hospice programs under the conditions described in paragraphs (1) through (4); and

(II) appropriate procedures for appealing determinations relating to the imposition of such remedies.

Remedies developed pursuant to the preceding sentence shall include the remedies specified in subparagraph (B).

(ii) Conditions of imposition of remedies

Not later than October 1, 2022, the Secretary shall develop and implement specific procedures with respect to the conditions under which each of the remedies developed under clause (i) is to be applied, including the amount of any fines and the severity of each of these remedies. Such procedures shall be designed so as to minimize the time between identification of deficiencies and imposition of these remedies and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies.

(B) Specified remedies

The remedies specified in this subparagraph are the following:

(i) Civil money penalties in an amount not to exceed \$10,000 for each day of non-compliance by a hospice program with the requirements specified in section 1395x(dd) of this title.

(ii) Suspension of all or part of the payments to which a hospice program would otherwise be entitled under this subchapter with respect to items and services furnished by a hospice program on or after the date on which the Secretary determines that remedies should be imposed pursuant to paragraphs (1) and (2).

(iii) The appointment of temporary management to oversee the operation of the hospice program and to protect and assure the health and safety of the individuals under the care of the program while improvements are made in order to bring the program into compliance with all such requirements.

(C) Procedures

(i) Civil money penalties

(I) In general

Subject to subclause (II), the provisions of section 1320a-7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under this subsection in the same manner as such provisions apply to a penalty or proceeding under section 1320a-7a(a) of this title.

(II) Retention of amounts for hospice program improvements

The Secretary may provide that any portion of civil money penalties collected under this subsection may be used to support activities that benefit individuals receiving hospice care, including education and training programs to ensure hospice program compliance with the requirements of section 1395x(dd) of this title.

(ii) Suspension of payment

A finding to suspend payment under subparagraph (B)(ii) shall terminate when the Secretary finds that the program is in substantial compliance with all requirements of section 1395x(dd) of this title.

(iii) Temporary management

The temporary management under subparagraph (B)(iii) shall not be terminated until the Secretary has determined that the program has the management capability to ensure continued compliance with all the requirements referred to in such subparagraph.

(D) Relationship to other remedies

The remedies developed under subparagraph (A) are in addition to sanctions otherwise available under State or Federal law and shall not be construed as limiting other remedies, including any remedy available to an individual at common law.

(Aug. 14, 1935, ch. 531, title XVIII, § 1822, as added Pub. L. 116-260, div. CC, title IV, § 407(a)(1), Dec. 27, 2020, 134 Stat. 3003.)

REFERENCES IN TEXT

Section 3(a)(2) of the Improving Medicare Post-Acute Care Transformation Act of 2014, referred to in subsec. (a)(5), means section 3(a)(2) of Pub. L. 113-185, Oct. 6, 2014, 128 Stat. 1968, which is not classified to the Code.

PART B—SUPPLEMENTARY MEDICAL INSURANCE
BENEFITS FOR AGED AND DISABLED**§ 1395j. Establishment of supplementary medical insurance program for aged and disabled**

There is hereby established a voluntary insurance program to provide medical insurance benefits in accordance with the provisions of this part for aged and disabled individuals who elect to enroll under such program, to be financed from premium payments by enrollees together with contributions from funds appropriated by the Federal Government.

(Aug. 14, 1935, ch. 531, title XVIII, § 1831, as added Pub. L. 89-97, title I, § 102(a), July 30, 1965, 79 Stat. 301; amended Pub. L. 92-603, title II, § 201(a)(3), Oct. 30, 1972, 86 Stat. 1371.)

AMENDMENTS

1972—Pub. L. 92-603 substituted “aged and disabled individuals” for “individuals 65 years of age or over”.

STUDY REGARDING COVERAGE UNDER PART B OF MEDICARE FOR NONREIMBURSABLE SERVICES PROVIDED BY OPTOMETRISTS FOR PROSTHETIC LENSES FOR PATIENTS WITH APHAKIA

Pub. L. 94-182, title I, § 109, Dec. 31, 1975, 89 Stat. 1053, provided that the Secretary of Health, Education, and Welfare conduct a study on the appropriateness of reimbursement under the insurance program established by this part for services performed by optometrists with respect to the provision of prosthetic lenses for patients with aphakia and submit such study to Congress not later than 4 months after Dec. 31, 1975.

STUDY TO DETERMINE FEASIBILITY OF INCLUSION OF CERTAIN ADDITIONAL SERVICES UNDER PART B

Pub. L. 90-248, title I, § 141, Jan. 2, 1968, 81 Stat. 855, directed Secretary to conduct a study relating to inclusion under the supplementary medical insurance program under this part of services of additional types of licensed practitioners performing health services in independent practice and submit such study to Congress prior to Jan. 1, 1969.

§ 1395k. Scope of benefits; definitions**(a) Scope of benefits**

The benefits provided to an individual by the insurance program established by this part shall consist of—

(1) entitlement to have payment made to him or on his behalf (subject to the provisions of this part) for medical and other health services, except those described in subparagraphs (B) and (D) of paragraph (2) and subparagraphs (E) and (F) of section 1395u(b)(6) of this title; and

(2) entitlement to have payment made on his behalf (subject to the provisions of this part) for—

(A) home health services (other than items described in subparagraph (G) or subparagraph (I));

(B) medical and other health services (other than items described in subparagraph (G) or subparagraph (I)) furnished by a provider of services or by others under arrangement with them made by a provider of services, excluding—

(i) physician services except where furnished by—

(I) a resident or intern of a hospital, or

(II) a physician to a patient in a hospital which has a teaching program approved as specified in paragraph (6) of section 1395x(b) of this title (including services in conjunction with the teaching programs of such hospital whether or not such patient is an inpatient of such hospital) where the conditions specified in paragraph (7) of such section are met,

(ii) services for which payment may be made pursuant to section 1395n(b)(2) of this title,

(iii) services described by section 1395x(s)(2)(K)(i) of this title, certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist;¹

(iv) services of a nurse practitioner or clinical nurse specialist but only if no facility or other provider charges or is paid any amounts with respect to the furnishing of such services; and²

(C) outpatient physical therapy services (other than services to which the second sentence of section 1395x(p) of this title applies), outpatient occupational therapy services (other than services to which such sentence applies through the operation of section 1395x(g) of this title), and outpatient speech-language pathology services (other than services to which the second sentence of section 1395x(p) of this title applies through the application of section 1395x(l)(2) of this title);

(D)(i) rural health clinic services and (ii) Federally qualified health center services;

(E) comprehensive outpatient rehabilitation facility services;

(F) facility services furnished in connection with surgical procedures specified by the Secretary—

¹ So in original. The semicolon probably should be a comma.

² So in original. The word “and” probably should not appear.