in this section as ''the Director'') shall enter into an agreement under which a system is established to carry out the following procedure:

(1) The Director shall notify the Commissioner when any individual is determined to be entitled to a monthly disability annuity payment pursuant to subchapter V of chapter 84 of subpart G of part III of title 5 and shall certify that such individual has provided the authorization described in subsection (f).

(2) If the Commissioner determines that an individual described in paragraph (1) is also entitled to past-due benefits under section 423 of this title, the Commissioner shall notify the Director of such fact.

(3) Not later than 30 days after receiving a notification described in paragraph (2) with respect to an individual, the Director shall provide the Commissioner with the total amount of any disability annuity overpayments made to such individual, as well as any other information (in such form and manner as the Commissioner shall require) that the Commissioner determines is necessary to carry out this section.

(4) If the Director provides the Commissioner with the information described in paragraph (3) in a timely manner, the Commissioner may withhold past-due benefits under section 423 of this title to which such individual is entitled and may pay the amount described in paragraph (3) to the Office of Personnel Management for any disability annuity overpayments made to such individual.

(5) The Director shall credit any amount received under paragraph (4) with respect to an individual toward any disability annuity overpayment owed by such individual.

(b) Limitations

(1) Priority of other reductions

Benefits shall only be withheld under this section after any other reduction applicable under this chapter, including sections 406(a)(4), 424a, and 1320a–6(a) of this title.

(2) Timely notification required

The Commissioner may not withhold benefits under this section if the Director does not provide the notice described in subsection (a)(3) within the time period described in such subsection.

(c) Delayed payment of past-due benefits

If the Commissioner is required to make a notification described in subsection (a)(2) with respect to an individual, the Commissioner shall not make any payment of past-due benefits under section 423 of this title to such individual until after the period described in subsection (a)(3).

(d) Review

Notwithstanding section 405 of this title or any other provision of law, any determination regarding the withholding of past-due benefits under this section shall only be subject to adjudication and review by the Director under section 8461 of title 5.

(e) Disability annuity overpayment defined

For purposes of this section, the term ''disability annuity overpayment'' means the amount of the reduction under section 8452(a)(2) of title 5 applicable to a monthly annuity payment made to an individual pursuant to subchapter V of chapter 84 of subpart G of part III of such title due to the individual's concurrent entitlement to a disability insurance benefit under section 423 of this title during such month.

(f) Authorization to withhold benefits

The authorization described in this subsection, with respect to an individual, is written authorization provided by the individual to the Director which authorizes the Commissioner to withhold past-due benefits under section 423 of this title to which such individual is entitled in order to pay the amount withheld to the Office of Personnel Management for any disability overpayments made to such individual.

(g) Expenses

The Director shall pay to the Social Security Administration an amount equal to the amount estimated by the Commissioner as the total cost incurred by the Social Security Administration in carrying out this section for each calendar quarter.

(Aug. 14, 1935, ch. 531, title XI, § 1127A, as added Pub. L. 114–74, title VIII, § 841(a), Nov. 2, 2015, 129 Stat. 615.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 114–74, title VIII, § 841(b), Nov. 2, 2015, 129 Stat. 617, provided that: ''The amendment made by this section [enacting this section] shall apply to past-due disability insurance benefits payable on or after the date that is 1 year after the date of the enactment of this section [Nov. 2, 2015].''

§ 1320a–7. Exclusion of certain individuals and entities from participation in Medicare and State health care programs

(a) Mandatory exclusion

The Secretary shall exclude the following individuals and entities from participation in any Federal health care program (as defined in section 1320a–7b(f) of this title):

(1) Conviction of program-related crimes

Any individual or entity that has been convicted of a criminal offense related to the delivery of an item or service under subchapter XVIII or under any State health care program.

(2) Conviction relating to patient abuse

Any individual or entity that has been convicted, under Federal or State law, of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service.

(3) Felony conviction relating to health care fraud

Any individual or entity that has been convicted for an offense which occurred after August 21, 1996, under Federal or State law, in connection with the delivery of a health care item or service or with respect to any act or omission in a health care program (other than those specifically described in paragraph (1))

operated by or financed in whole or in part by any Federal, State, or local government agency, of a criminal offense consisting of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.

(4) Felony conviction relating to controlled substance

Any individual or entity that has been convicted for an offense which occurred after August 21, 1996, under Federal or State law, of a criminal offense consisting of a felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

(b) Permissive exclusion

The Secretary may exclude the following individuals and entities from participation in any Federal health care program (as defined in section 1320a–7b(f) of this title):

(1) Conviction relating to fraud

Any individual or entity that has been convicted for an offense which occurred after August 21, 1996, under Federal or State law—

(A) of a criminal offense consisting of a misdemeanor relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct—

(i) in connection with the delivery of a health care item or service, or

(ii) with respect to any act or omission in a health care program (other than those specifically described in subsection (a)(1)) operated by or financed in whole or in part by any Federal, State, or local government agency; or

(B) of a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct with respect to any act or omission in a program (other than a health care program) operated by or financed in whole or in part by any Federal, State, or local government agency.

(2) Conviction relating to obstruction of an investigation or audit

Any individual or entity that has been convicted, under Federal or State law, in connection with the interference with or obstruction of any investigation or audit related to—

(i) any offense described in paragraph (1) or in subsection (a); or

(ii) the use of funds received, directly or indirectly, from any Federal health care program (as defined in section 1320a–7b(f) of this title).

(3) Misdemeanor conviction relating to controlled substance

Any individual or entity that has been convicted, under Federal or State law, of a criminal offense consisting of a misdemeanor relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

(4) License revocation or suspension

Any individual or entity—

(A) whose license to provide health care has been revoked or suspended by any State licensing authority, or who otherwise lost such a license or the right to apply for or renew such a license, for reasons bearing on the individual's or entity's professional competence, professional performance, or financial integrity, or

(B) who surrendered such a license while a formal disciplinary proceeding was pending before such an authority and the proceeding concerned the individual's or entity's professional competence, professional performance, or financial integrity.

(5) Exclusion or suspension under Federal or State health care program

Any individual or entity which has been suspended or excluded from participation, or otherwise sanctioned, under—

(A) any Federal program, including programs of the Department of Defense or the Department of Veterans Affairs, involving the provision of health care, or

(B) a State health care program,

for reasons bearing on the individual's or entity's professional competence, professional performance, or financial integrity.

(6) Claims for excessive charges or unnecessary services and failure of certain organizations to furnish medically necessary services

Any individual or entity that the Secretary determines—

(A) has submitted or caused to be submitted bills or requests for payment (where such bills or requests are based on charges or cost) under subchapter XVIII or a State health care program containing charges (or, in applicable cases, requests for payment of costs) for items or services furnished substantially in excess of such individual's or entity's usual charges (or, in applicable cases, substantially in excess of such individual's or entity's costs) for such items or services, unless the Secretary finds there is good cause for such bills or requests containing such charges or costs;

(B) has furnished or caused to be furnished items or services to patients (whether or not eligible for benefits under subchapter XVIII or under a State health care program) substantially in excess of the needs of such patients or of a quality which fails to meet professionally recognized standards of health care;

(C) is—

(i) a health maintenance organization (as defined in section 1396b(m) of this title) providing items and services under a State plan approved under subchapter XIX, or

(ii) an entity furnishing services under a waiver approved under section 1396n(b)(1) of this title,

and has failed substantially to provide medically necessary items and services that are required (under law or the contract with the State under subchapter XIX) to be provided to individuals covered under that plan or waiver, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals; or

(D) is an entity providing items and services as an eligible organization under a risk-sharing contract under section 1395mm of this title and has failed substantially to provide medically necessary items and services that are required (under law or such contract) to be provided to individuals covered under the risk-sharing contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals.

(7) Fraud, kickbacks, and other prohibited activities

Any individual or entity that the Secretary determines has committed an act which is described in section 1320a–7a, 1320a–7b, or 1320a–8 of this title.

(8) Entities controlled by a sanctioned individual

Any entity with respect to which the Secretary determines that a person—

(A)(i) who has a direct or indirect ownership or control interest of 5 percent or more in the entity or with an ownership or control interest (as defined in section 1320a–3(a)(3) of this title) in that entity,

(ii) who is an officer, director, agent, or managing employee (as defined in section 1320a–5(b) of this title) of that entity; or

(iii) who was described in clause (i) but is no longer so described because of a transfer of ownership or control interest, in anticipation of (or following) a conviction, assessment, or exclusion described in subparagraph (B) against the person, to an immediate family member (as defined in subsection (j)(1)) or a member of the household of the person (as defined in subsection (j)(2)) who continues to maintain an interest described in such clause—

is a person—

(B)(i) who has been convicted of any offense described in subsection (a) or in paragraph (1), (2), or (3) of this subsection;

(ii) against whom a civil monetary penalty has been assessed under section 1320a–7a or 1320a–8 of this title; or

(iii) who has been excluded from participation under a program under subchapter XVIII or under a State health care program.

(9) Failure to disclose required information

Any entity that did not fully and accurately make any disclosure required by section 1320a–3 of this title, section 1320a–3a of this title, or section 1320a–5 of this title.

(10) Failure to supply requested information on subcontractors and suppliers

Any disclosing entity (as defined in section 1320a–3(a)(2) of this title) that fails to supply (within such period as may be specified by the Secretary in regulations) upon request specifically addressed to the entity by the Secretary or by the State agency administering or supervising the administration of a State health care program—

(A) full and complete information as to the ownership of a subcontractor (as defined by the Secretary in regulations) with whom the entity has had, during the previous 12 months, business transactions in an aggregate amount in excess of $25,000, or

(B) full and complete information as to any significant business transactions (as defined by the Secretary in regulations), occurring during the five-year period ending on the date of such request, between the entity and any wholly owned supplier or between the entity and any subcontractor.

(11) Failure to supply payment information

Any individual or entity furnishing, ordering, referring for furnishing, or certifying the need for items or services for which payment may be made under subchapter XVIII or a State health care program that fails to provide such information as the Secretary or the appropriate State agency finds necessary to determine whether such payments are or were due and the amounts thereof, or has refused to permit such examination of its records by or on behalf of the Secretary or that agency as may be necessary to verify such information.

(12) Failure to grant immediate access

Any individual or entity that fails to grant immediate access, upon reasonable request (as defined by the Secretary in regulations) to any of the following:

(A) To the Secretary, or to the agency used by the Secretary, for the purpose specified in the first sentence of section 1395aa(a) of this title (relating to compliance with conditions of participation or payment).

(B) To the Secretary or the State agency, to perform the reviews and surveys required under State plans under paragraphs (26), (31), and (33) of section 1396a(a) of this title and under section 1396b(g) of this title.

(C) To the Inspector General of the Department of Health and Human Services, for the purpose of reviewing records, documents, and other data necessary to the performance of the statutory functions of the Inspector General.

(D) To a State medicaid fraud control unit (as defined in section 1396b(q) of this title), for the purpose of conducting activities described in that section.

(13) Failure to take corrective action

Any hospital that fails to comply substantially with a corrective action required under section 1395ww(f)(2)(B) of this title.

(14) Default on health education loan or scholarship obligations

Any individual who the Secretary determines is in default on repayments of scholarship obligations or loans in connection with health professions education made or secured, in whole or in part, by the Secretary and with respect to whom the Secretary has taken all reasonable steps available to the Secretary to secure repayment of such obligations or loans, except that (A) the Secretary shall not exclude pursuant to this paragraph a physician who is the sole community physician or sole source of essential specialized services in a community if a State requests that the physician not be excluded, and (B) the Secretary

shall take into account, in determining whether to exclude any other physician pursuant to this paragraph, access of beneficiaries to physician services for which payment may be made under subchapter XVIII or XIX.

(15) Individuals controlling a sanctioned entity

(A) Any individual—

(i) who has a direct or indirect ownership or control interest in a sanctioned entity and who knows or should know (as defined in section 1320a–7a(i)(6)[1] of this title) of the action constituting the basis for the conviction or exclusion described in subparagraph (B); or

(ii) who is an officer or managing employee (as defined in section 1320a–5(b) of this title) of such an entity.

(B) For purposes of subparagraph (A), the term ''sanctioned entity'' means an entity—

(i) that has been convicted of any offense described in subsection (a) or in paragraph (1), (2), or (3) of this subsection; or

(ii) that has been excluded from participation under a program under subchapter XVIII or under a State health care program.

(16) Making false statements or misrepresentation of material facts

Any individual or entity that knowingly makes or causes to be made any false statement, omission, or misrepresentation of a material fact in any application, agreement, bid, or contract to participate or enroll as a provider of services or supplier under a Federal health care program (as defined in section 1320a–7b(f) of this title), including Medicare Advantage organizations under part C of subchapter XVIII, prescription drug plan sponsors under part D of subchapter XVIII, medicaid managed care organizations under subchapter XIX, and entities that apply to participate as providers of services or suppliers in such managed care organizations and such plans.

(17) Knowingly misclassifying covered outpatient drugs

Any manufacturer or officer, director, agent, or managing employee of such manufacturer that knowingly misclassifies a covered outpatient drug under an agreement under section 1396r–8 of this title, knowingly fails to correct such misclassification, or knowingly provides false information related to drug pricing, drug product information, or data related to drug pricing or drug product information.

(c) Notice, effective date, and period of exclusion

(1) An exclusion under this section or under section 1320a–7a of this title shall be effective at such time and upon such reasonable notice to the public and to the individual or entity excluded as may be specified in regulations consistent with paragraph (2).

(2)(A) Except as provided in subparagraph (B), such an exclusion shall be effective with respect to services furnished to an individual on or after the effective date of the exclusion.

(B) Unless the Secretary determines that the health and safety of individuals receiving services warrants the exclusion taking effect earlier, an exclusion shall not apply to payments made under subchapter XVIII or under a State health care program for—

(i) inpatient institutional services furnished to an individual who was admitted to such institution before the date of the exclusion, or

(ii) home health services and hospice care furnished to an individual under a plan of care established before the date of the exclusion,

until the passage of 30 days after the effective date of the exclusion.

(3)(A) The Secretary shall specify, in the notice of exclusion under paragraph (1) and the written notice under section 1320a–7a of this title, the minimum period (or, in the case of an exclusion of an individual under subsection (b)(12) or in the case described in subparagraph (G), the period) of the exclusion.

(B) Subject to subparagraph (G), in the case of an exclusion under subsection (a), the minimum period of exclusion shall be not less than five years, except that, upon the request of the administrator of a Federal health care program (as defined in section 1320a–7b(f) of this title) who determines that the exclusion would impose a hardship on beneficiaries (as defined in section 1320a–7a(i)(5) of this title) of that program, the Secretary may, after consulting with the Inspector General of the Department of Health and Human Services, waive the exclusion under subsection (a)(1), (a)(3), or (a)(4) with respect to that program in the case of an individual or entity that is the sole community physician or sole source of essential specialized services in a community. The Secretary's decision whether to waive the exclusion shall not be reviewable.

(C) In the case of an exclusion of an individual under subsection (b)(12), the period of the exclusion shall be equal to the sum of—

(i) the length of the period in which the individual failed to grant the immediate access described in that subsection, and

(ii) an additional period, not to exceed 90 days, set by the Secretary.

(D) Subject to subparagraph (G), in the case of an exclusion of an individual or entity under paragraph (1), (2), or (3) of subsection (b), the period of the exclusion shall be 3 years, unless the Secretary determines in accordance with published regulations that a shorter period is appropriate because of mitigating circumstances or that a longer period is appropriate because of aggravating circumstances.

(E) In the case of an exclusion of an individual or entity under subsection (b)(4) or (b)(5), the period of the exclusion shall not be less than the period during which the individual's or entity's license to provide health care is revoked, suspended, or surrendered, or the individual or the entity is excluded or suspended from a Federal or State health care program.

(F) In the case of an exclusion of an individual or entity under subsection (b)(6)(B), the period of the exclusion shall be not less than 1 year.

(G) In the case of an exclusion of an individual under subsection (a) based on a conviction occurring on or after August 5, 1997, if the individual has (before, on, or after August 5, 1997) been convicted—

[1] So in original. Probably should be section ''1320a–7a(i)(7)''.

(i) on one previous occasion of one or more offenses for which an exclusion may be effected under such subsection, the period of the exclusion shall be not less than 10 years, or

(ii) on 2 or more previous occasions of one or more offenses for which an exclusion may be effected under such subsection, the period of the exclusion shall be permanent.

(d) Notice to State agencies and exclusion under State health care programs

(1) Subject to paragraph (3), the Secretary shall exercise the authority under this section and section 1320a–7a of this title in a manner that results in an individual's or entity's exclusion from all the programs under subchapter XVIII and all the State health care programs in which the individual or entity may otherwise participate.

(2) The Secretary shall promptly notify each appropriate State agency administering or supervising the administration of each State health care program (and, in the case of an exclusion effected pursuant to subsection (a) and to which section 824(a)(5) of title 21 may apply, the Attorney General)—

(A) of the fact and circumstances of each exclusion effected against an individual or entity under this section or section 1320a–7a of this title, and

(B) of the period (described in paragraph (3)) for which the State agency is directed to exclude the individual or entity from participation in the State health care program.

(3)(A) Except as provided in subparagraph (B), the period of the exclusion under a State health care program under paragraph (2) shall be the same as any period of exclusion under subchapter XVIII.

(B)(i) The Secretary may waive an individual's or entity's exclusion under a State health care program under paragraph (2) if the Secretary receives and approves a request for the waiver with respect to the individual or entity from the State agency administering or supervising the administration of the program.

(ii) A State health care program may provide for a period of exclusion which is longer than the period of exclusion under subchapter XVIII.

(e) Notice to State licensing agencies

The Secretary shall—

(1) promptly notify the appropriate State or local agency or authority having responsibility for the licensing or certification of an individual or entity excluded (or directed to be excluded) from participation under this section or section 1320a–7a of this title, of the fact and circumstances of the exclusion,

(2) request that appropriate investigations be made and sanctions invoked in accordance with applicable State law and policy, and

(3) request that the State or local agency or authority keep the Secretary and the Inspector General of the Department of Health and Human Services fully and currently informed with respect to any actions taken in response to the request.

(f) Notice, hearing, and judicial review

(1) Subject to paragraph (2), any individual or entity that is excluded (or directed to be excluded) from participation under this section is entitled to reasonable notice and opportunity for a hearing thereon by the Secretary to the same extent as is provided in section 405(b) of this title, and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title, except that, in so applying such sections and section 405(*l*) of this title, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.

(2) Unless the Secretary determines that the health or safety of individuals receiving services warrants the exclusion taking effect earlier, any individual or entity that is the subject of an adverse determination under subsection (b)(7) shall be entitled to a hearing by an administrative law judge (as provided under section 405(b) of this title) on the determination under subsection (b)(7) before any exclusion based upon the determination takes effect.

(3) The provisions of section 405(h) of this title shall apply with respect to this section and sections 1320a–7a, 1320a–8, and 1320c–5 of this title to the same extent as it is applicable with respect to subchapter II, except that, in so applying such section and section 405(*l*) of this title, any reference therein to the Commissioner of Social Security shall be considered a reference to the Secretary.

(4) The provisions of subsections (d) and (e) of section 405 of this title shall apply with respect to this section to the same extent as they are applicable with respect to subchapter II. The Secretary may delegate the authority granted by section 405(d) of this title (as made applicable to this section) to the Inspector General of the Department of Health and Human Services for purposes of any investigation under this section.

(g) Application for termination of exclusion

(1) An individual or entity excluded (or directed to be excluded) from participation under this section or section 1320a–7a of this title may apply to the Secretary, in the manner specified by the Secretary in regulations and at the end of the minimum period of exclusion provided under subsection (c)(3) and at such other times as the Secretary may provide, for termination of the exclusion effected under this section or section 1320a–7a of this title.

(2) The Secretary may terminate the exclusion if the Secretary determines, on the basis of the conduct of the applicant which occurred after the date of the notice of exclusion or which was unknown to the Secretary at the time of the exclusion, that—

(A) there is no basis under subsection (a) or (b) or section 1320a–7a(a) of this title for a continuation of the exclusion, and

(B) there are reasonable assurances that the types of actions which formed the basis for the original exclusion have not recurred and will not recur.

(3) The Secretary shall promptly notify each appropriate State agency administering or supervising the administration of each State health care program (and, in the case of an exclusion effected pursuant to subsection (a) and

to which section 824(a)(5) of title 21 may apply, the Attorney General) of the fact and circumstances of each termination of exclusion made under this subsection.

(h) "State health care program" defined

For purposes of this section and sections 1320a–7a and 1320a–7b of this title, the term ''State health care program'' means—

(1) a State plan approved under subchapter XIX,

(2) any program receiving funds under subchapter V or from an allotment to a State under such subchapter,

(3) any program receiving funds under division A[2] of subchapter XX or from an allotment to a State under such division, or

(4) a State child health plan approved under subchapter XXI.

(i) "Convicted" defined

For purposes of subsections (a) and (b), an individual or entity is considered to have been ''convicted'' of a criminal offense—

(1) when a judgment of conviction has been entered against the individual or entity by a Federal, State, or local court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged;

(2) when there has been a finding of guilt against the individual or entity by a Federal, State, or local court;

(3) when a plea of guilty or nolo contendere by the individual or entity has been accepted by a Federal, State, or local court; or

(4) when the individual or entity has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld.

(j) Definition of immediate family member and member of household

For purposes of subsection (b)(8)(A)(iii):

(1) The term ''immediate family member'' means, with respect to a person—

(A) the husband or wife of the person;

(B) the natural or adoptive parent, child, or sibling of the person;

(C) the stepparent, stepchild, stepbrother, or stepsister of the person;

(D) the father-, mother-, daughter-, son-, brother-, or sister-in-law of the person;

(E) the grandparent or grandchild of the person; and

(F) the spouse of a grandparent or grandchild of the person.

(2) The term ''member of the household'' means, with respect to any person, any individual sharing a common abode as part of a single family unit with the person, including domestic employees and others who live together as a family unit, but not including a roomer or boarder.

(Aug. 14, 1935, ch. 531, title XI, § 1128, as added Pub. L. 96–499, title IX, § 913(a), Dec. 5, 1980, 94 Stat. 2619; amended Pub. L. 97–35, title XXI, § 2105(b), title XXIII, § 2353(k), Aug. 13, 1981, 95 Stat. 791, 873; Pub. L. 98–369, div. B, title III, § 2333(a), (b), July 18, 1984, 98 Stat. 1089; Pub. L. 99–509, title IX, § 9317(c), Oct. 21, 1986, 100 Stat. 2008; Pub. L. 100–93, § 2, Aug. 18, 1987, 101 Stat. 680; Pub. L. 100–203, title IV, § 4118(e)(2)–(5), Dec. 22, 1987, 101 Stat. 1330–155, as amended Pub. L. 100–360, title IV, § 411(k)(10)(D), July 1, 1988, 102 Stat. 795; Pub. L. 100–360, title IV, § 411(k)(10)(C), July 1, 1988, 102 Stat. 795; Pub. L. 101–239, title VI, § 6411(d)(1), Dec. 19, 1989, 103 Stat. 2270; Pub. L. 101–508, title IV, § 4164(b)(3), Nov. 5, 1990, 104 Stat. 1388–102; Pub. L. 102–54, § 13(q)(3)(A)(ii), June 13, 1991, 105 Stat. 279; Pub. L. 103–296, title I, § 108(b)(9), title II, § 206(b)(2), Aug. 15, 1994, 108 Stat. 1483, 1513; Pub. L. 104–191, title II, §§ 211–213, Aug. 21, 1996, 110 Stat. 2003–2005; Pub. L. 105–33, title IV, §§ 4301, 4303(a), 4331(c), 4901(b)(2), Aug. 5, 1997, 111 Stat. 382, 396, 570; Pub. L. 108–173, title IX, § 949, Dec. 8, 2003, 117 Stat. 2426; Pub. L. 111–148, title VI, §§ 6402(d)(1), (e), (k), 6406(c), 6408(c), 6703(d)(3)(A), Mar. 23, 2010, 124 Stat. 757, 759, 763, 769, 772, 804; Pub. L. 116–16, § 6(d), Apr. 18, 2019, 133 Stat. 864.)

[2] See References in Text note below.

Editorial Notes

REFERENCES IN TEXT

Division A of subchapter XX, referred to in subsec. (h)(3), was in the original a reference to subtitle 1 of title XX, which was translated as if referring to subtitle A of title XX of the Social Security Act, to reflect the probable intent of Congress. Title XX of the Act, enacting subchapter XX of this chapter, does not contain a subtitle 1.

AMENDMENTS

2019—Subsec. (b)(17). Pub. L. 116–16 added par. (17).

2010—Subsec. (b)(2). Pub. L. 111–148, § 6408(c), inserted ''or audit'' after ''investigation'' in the heading, substituted ''investigation or audit related to—'' for ''investigation into any criminal offense described in paragraph (1) or in subsection (a) of this section.'', and added cls. (i) and (ii).

Subsec. (b)(11). Pub. L. 111–148, § 6406(c), inserted '', ordering, referring for furnishing, or certifying the need for'' after ''furnishing''.

Subsec. (b)(16). Pub. L. 111–148, § 6402(d)(1), added par. (16).

Subsec. (c)(3)(B). Pub. L. 111–148, § 6402(k), substituted ''beneficiaries (as defined in section 1320a–7a(i)(5) of this title) of that program'' for ''individuals entitled to benefits under part A of subchapter XVIII or enrolled under part B of such subchapter, or both''.

Subsec. (f)(4). Pub. L. 111–148, § 6402(e), added par. (4).

Subsec. (h)(3). Pub. L. 111–148, § 6703(d)(3)(A), inserted ''division A of'' before ''subchapter XX'' and substituted ''such division'' for ''such subchapter''.

2003—Subsec. (c)(3)(B). Pub. L. 108–173 amended first sentence generally. Prior to amendment, first sentence read as follows: ''Subject to subparagraph (G), in the case of an exclusion under subsection (a) of this section, the minimum period of exclusion shall be not less than five years, except that, upon the request of a State, the Secretary may waive the exclusion under subsection (a)(1) of this section in the case of an individual or entity that is the sole community physician or sole source of essential specialized services in a community.''

1997—Subsec. (a). Pub. L. 105–33, § 4331(c)(1), substituted ''any Federal health care program (as defined in section 1320a–7b(f) of this title)'' for ''any program under subchapter XVIII and shall direct that the following individuals and entities be excluded from participation in any State health care program (as defined in subsection (h) of this section)'' in introductory provisions.

Subsec. (b). Pub. L. 105–33, § 4331(c)(2), substituted ''any Federal health care program (as defined in section 1320a–7b(f) of this title)'' for ''any program under subchapter XVIII and may direct that the following individuals and entities be excluded from participation in any State health care program'' in introductory provisions.

Subsec. (b)(8)(A)(iii). Pub. L. 105–33, § 4303(a)(1), added cl. (iii).

Subsec. (c)(3)(A). Pub. L. 105–33, § 4301(1), inserted ''or in the case described in subparagraph (G)'' after ''subsection (b)(12)''.

Subsec. (c)(3)(B), (D). Pub. L. 105–33, § 4301(2), substituted ''Subject to subparagraph (G), in the case'' for ''In the case''.

Subsec. (c)(3)(G). Pub. L. 105–33, § 4301(3), added subpar. (G).

Subsec. (h)(4). Pub. L. 105–33, § 4901(b)(2), added par. (4).

Subsec. (j). Pub. L. 105–33, § 4303(a)(2), added subsec. (j).

1996—Subsec. (a)(3). Pub. L. 104–191, § 211(a)(1), added par. (3).

Subsec. (a)(4). Pub. L. 104–191, § 211(b)(1), added par. (4).

Subsec. (b)(1). Pub. L. 104–191, § 211(a)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Any individual or entity that has been convicted, under Federal or State law, in connection with the delivery of a health care item or service or with respect to any act or omission in a program operated by or financed in whole or in part by any Federal, State, or local government agency, of a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.''

Subsec. (b)(3). Pub. L. 104–191, § 211(b)(2), substituted ''Misdemeanor conviction'' for ''conviction'' in heading and ''criminal offense consisting of a misdemeanor'' for ''criminal offense'' in text.

Subsec. (b)(15). Pub. L. 104–191, § 213, added par. (15).

Subsec. (c)(3)(D) to (F). Pub. L. 104–191, § 212, added subpars. (D) to (F).

1994—Subsec. (b)(7). Pub. L. 103–296, § 206(b)(2)(A), substituted ''section 1320a–7a, 1320a–7b, or 1230a–8 of this title'' for ''section 1320a–7a of this title or section 1320a–7b of this title''.

Subsec. (b)(8)(B)(ii). Pub. L. 103–296, § 206(b)(2)(B), inserted ''or 1320a–8'' after ''section 1320a–7a''.

Subsec. (f)(1). Pub. L. 103–296, § 108(b)(9)(A), inserted before period at end '', except that, in so applying such sections and section 405(*l*) of this title, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively''.

Subsec. (f)(3). Pub. L. 103–296, § 206(b)(2)(C), inserted '', 1320a–8,'' after ''sections 1320a–7a''.

Pub. L. 103–296, § 108(b)(9)(B), inserted before period at end '', except that, in so applying such section and section 405(*l*) of this title, any reference therein to the Commissioner of Social Security shall be considered a reference to the Secretary''.

1991—Subsec. (b)(5)(A). Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1990—Subsec. (b)(9). Pub. L. 101–508 substituted ''section 1320a–3 of this title, section 1320a–3a of this title,'' for ''section 1320a–3 of this title''.

1989—Subsec. (b)(4)(A). Pub. L. 101–239 inserted ''or the right to apply for or renew such a license'' after ''lost such a license''.

1988—Pub. L. 100–360, § 411(k)(10)(D), added Pub. L. 100–203, § 4118(e)(3)–(5), which amended subsec. (b)(8)(A)(i), (d)(1), (3)(A), and (i). See 1987 Amendment notes below.

Subsec. (d)(3)(B)(ii). Pub. L. 100–360, § 411(k)(10)(C), struck out ''under a program'' after ''longer than the period of exclusion''.

1987—Pub. L. 100–93 amended section generally, substituting subsecs. (a) to (i) for former subsecs. (a) to (f).

Subsec. (b)(8)(A)(i). Pub. L. 100–203, § 4118(e)(3), as added by Pub. L. 100–360, § 411(k)(10)(D), inserted at beginning ''who has a direct or indirect ownership or control interest of 5 percent or more in the entity or''.

Subsec. (d)(1). Pub. L. 100–203, § 4118(e)(4)(A), as added by Pub. L. 100–360, § 411(k)(10)(D), substituted ''this section and section 1320a–7a of this title'' for ''subsection (b) of this section''.

Subsec. (d)(3)(A). Pub. L. 100–203, § 4118(e)(4)(B), as added by Pub. L. 100–360, § 411(k)(10)(D), struck out ''under a program'' after ''any period of exclusion''.

Subsec. (d)(3)(B). Pub. L. 100–203, § 4118(e)(2), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (i). Pub. L. 100–203, § 4118(e)(5)(A), as added by Pub. L. 100–360, § 411(k)(10)(D), substituted ''an individual or entity'' for ''a physician or other individual'' in introductory provisions.

Pub. L. 100–203, § 4118(e)(5)(B), as added by Pub. L. 100–360, § 411(k)(10)(D), which directed amendment of pars. (1) to (4) by substituting ''individual or entity'' for ''physician or other individual'' each place it appears, was executed by substituting ''individual or entity'' for ''physician or individual'' in pars. (1) to (4) as the probable intent of Congress.

Subsec. (i)(4). Pub. L. 100–203, § 4118(e)(5)(C), as added by Pub. L. 100–360, § 411(k)(10)(D), substituted ''first offender, deferred adjudication, or other arrangement or program'' for ''first offender or other program''.

1986—Subsec. (f). Pub. L. 99–509 added subsec. (f).

1984—Subsecs. (b) to (e). Pub. L. 98–369 added subsec. (b), redesignated former subsecs. (b) to (d) as (c) to (e), respectively, and in subsec. (e) substituted ''Any person or entity'' for ''Any person'' and ''(a), (b), or (c)'' for ''(a) or (b)''.

1981—Subsec. (a)(1). Pub. L. 97–35, § 2105(b)(1), struck out '', for such period as he may deem appropriate,'' after ''subchapter XVIII of this chapter''.

Subsec. (a)(2). Pub. L. 97–35, § 2353(k), substituted in subpar. (A) ''subchapter XIX of this chapter'' for ''subchapter XIX or subchapter XX of this chapter,'' and in subpar. (B) ''subchapter XIX of this chapter'' for ''subchapter XIX or subchapter XX of this chapter''.

Subsecs. (b) to (d). Pub. L. 97–35, § 2105(b)(2)–(4), added subsec. (b), redesignated former subsecs. (b) and (c) as (c) and (d), respectively, and in subsec. (d) as so redesignated substituted ''subsection (a) or (b)'' for ''subsection (a)''.

Statutory Notes and Related Subsidiaries

Effective Date of 2019 Amendment

Pub. L. 116–16, § 6(e), Apr. 18, 2019, 133 Stat. 864, provided that: ''The amendments made by this section [amending this section and sections 1396b and 1396r–8 of this title] shall take effect on the date of the enactment of this Act [Apr. 18, 2019], and shall apply to covered outpatient drugs supplied by manufacturers under agreements under section 1927 of the Social Security Act (42 U.S.C. 1396r–8) on or after such date.''

Effective Date of 2010 Amendment

Pub. L. 111–148, title VI, § 6406(d), Mar. 23, 2010, 124 Stat. 769, provided that: ''The amendments made by this section [amending this section and sections 1395u and 1395cc of this title] shall apply to orders, certifications, and referrals made on or after January 1, 2010.''

Pub. L. 111–148, title VI, § 6408(d), Mar. 23, 2010, 124 Stat. 772, provided that:

''(1) In general.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1320a–7a and 1395w–27 of this title] shall apply to acts committed on or after January 1, 2010.

''(2) Exception.—The amendments made by subsection (b)(1) [amending section 1395w–27 of this title] take effect on the date of enactment of this Act [Mar. 23, 2010].''

Effective Date of 1997 Amendment

Pub. L. 105–33, title IV, § 4303(b), Aug. 5, 1997, 111 Stat. 383, provided that: ''The amendments made by this sec-

tion [amending this section] shall take effect on the date that is 45 days after the date of the enactment of this Act [Aug. 5, 1997].''

Amendments by section 4331(c) of Pub. L. 105–33 effective Aug. 5, 1997, see section 4331(f)(2) of Pub. L. 105–33, set out as a note under section 1320a–7e of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–191, title II, § 218, Aug. 21, 1996, 110 Stat. 2009, provided that: ''Except as otherwise provided, the amendments made by this subtitle [subtitle B, §§ 211–218, of title II of Pub. L. 104–191, amending this section and sections 1320a–7b, 1320c–5, and 1395mm of this title] shall take effect January 1, 1997.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(b)(9) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Pub. L. 103–296, title II, § 206(b)(3), Aug. 15, 1994, 108 Stat. 1513, provided that: ''The amendments made by this subsection [enacting section 1320a–8 of this title and amending this section] shall apply to conduct occurring on or after October 1, 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to items or services furnished on or after Jan. 1, 1993, in the case of items or services furnished by a provider who, on or before Nov. 5, 1990, has furnished items or services for which payment may be made under part B of subchapter XVIII of this chapter, or Jan. 1, 1992, in the case of items or services furnished by any other provider, see section 4164(b)(4) of Pub. L. 101–508, set out as an Effective Date note under section 1320a–3a of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VI, § 6411(d)(4)[(A)], Dec. 19, 1989, 103 Stat. 2271, provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and sections 1395y and 1396b of this title] shall take effect on the date of the enactment of this Act [Dec. 19, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by 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. 100–93, § 15, Aug. 18, 1987, 101 Stat. 698, provided that:

''(a) IN GENERAL.—Except as provided in subsections (b), (c), (d), and (e), the amendments made by this Act [enacting sections 1395aaa and 1396r–2 of this title, amending this section, sections 704, 1320a–3, 1320a–5, 1320a–7a, 1320a–7b, 1320c–5, 1395u, 1395y, 1395cc, 1395ff, 1395nn, 1395rr, 1395ss, 1395ww, 1396a, 1396b, 1396h, 1396n, 1396s, and 1397d of this title, and section 824 of Title 21, Food and Drugs, transferring section 1396h of this title to section 1320a–7b of this title, repealing section 1395nn of this title, enacting provisions set out as a note under section 1320a–7b of this title, and amending provisions set out as a note under section 1396a of this title] shall become effective at the end of the fourteen-day period beginning on the date of the enactment of this Act [Aug. 18, 1987] and shall not apply to administrative proceedings commenced before the end of such period.

''(b) MANDATORY MINIMUM EXCLUSIONS APPLY PROSPECTIVELY.—Section 1128(c)(3)(B) of the Social Security Act [42 U.S.C. 1320a–7(c)(3)(B)] (as amended by this Act), which requires an exclusion of not less than five years in the case of certain exclusions, shall not apply to exclusions based on convictions occurring before the date of the enactment of this Act [Aug. 18, 1987].

''(c) EFFECTIVE DATE FOR CHANGES IN MEDICAID LAW.—(1) The amendments made by sections 5 and 8(f) [enacting section 1396r–2 of this title and amending sections 1396a and 1396s of this title] apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for calendar quarters beginning more than thirty days after the date of the enactment of this Act [Aug. 18, 1987], without regard to whether or not final regulations to carry out such amendment have been published by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this Act, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

''(3) Subsection (j) of section 1128A of the Social Security Act [42 U.S.C. 1320a–7a(j)] (as added by section 3(f) of this Act) takes effect on the date of the enactment of this Act.

''(d) PHYSICIAN MISREPRESENTATIONS.—Clauses (ii) and (iii) of section 1128A(a)(1)(C) of the Social Security Act [42 U.S.C. 1320a–7a(a)(1)(C)(ii), (iii)], as amended by section 3(a)(1) of this Act, apply to claims presented for services performed on or after the effective date specified in subsection (a), without regard to the date the misrepresentation of fact was made.

''(e) CLARIFICATION OF MEDICAID MORATORIUM.—The amendments made by section 9 of this Act [amending provisions set out as a note under section 1396a of this title] shall apply as though they were originally included in the enactment of section 2373(c) of the Deficit Reduction Act of 1984 [set out as a note under section 1396a of this title].

''(f) TREATMENT OF CERTAIN DENIALS OF PAYMENT.—For purposes of section 1128(b)(8)(B)(iii) of the Social Security Act [42 U.S.C. 1320a–7(b)(8)(B)(iii)] (as amended by section 2 of this Act), a person shall be considered to have been excluded from participation under a program under title XVIII [42 U.S.C. 1395 et seq.] if payment to the person has been denied under section 1862(d) of the Social Security Act [42 U.S.C. 1395y(d)], as in effect before the effective date specified in subsection (a).''

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–509, title IX, § 9317(d)(3), Oct. 21, 1986, 100 Stat. 2009, provided that: ''The provisions—

''(A) of paragraphs (1), (2), and (3) of section 1128(f) of the Social Security Act [42 U.S.C. 1320a–7(f)(1)–(3)] (as added by the amendment made by subsection (c)) shall apply to judgments entered, findings made, and pleas entered, before, on, or after the date of the enactment of this Act [Oct. 21, 1986], and

''(B) of paragraph (4) of such section [42 U.S.C. 1320a–7(f)(4)] shall apply to participation in a program entered into on or after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. B, title III, § 2333(c), July 18, 1984, 98 Stat. 1089, provided that: ''The amendments made by this section [amending this section] become effective on the date of the enactment of this Act [July 18, 1984] and shall apply to convictions of persons occurring after such date.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2353(k) of 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.

§ 1320a–7a. Civil monetary penalties

(a) Improperly filed claims

Any person (including an organization, agency, or other entity, but excluding a beneficiary, as defined in subsection (i)(5)) that—

(1) knowingly presents or causes to be presented to an officer, employee, or agent of the United States, or of any department or agency thereof, or of any State agency (as defined in subsection (i)(1)), a claim (as defined in subsection (i)(2)) that the Secretary determines—

(A) is for a medical or other item or service that the person knows or should know was not provided as claimed, including any person who engages in a pattern or practice of presenting or causing to be presented a claim for an item or service that is based on a code that the person knows or should know will result in a greater payment to the person than the code the person knows or should know is applicable to the item or service actually provided,

(B) is for a medical or other item or service and the person knows or should know the claim is false or fraudulent,

(C) is presented for a physician's service (or an item or service incident to a physician's service) by a person who knows or should know that the individual who furnished (or supervised the furnishing of) the service—

(i) was not licensed as a physician,

(ii) was licensed as a physician, but such license had been obtained through a misrepresentation of material fact (including cheating on an examination required for licensing), or

(iii) represented to the patient at the time the service was furnished that the physician was certified in a medical specialty by a medical specialty board when the individual was not so certified,

(D) is for a medical or other item or service furnished during a period in which the person was excluded from the Federal health care program (as defined in section 1320a–7b(f) of this title) under which the claim was made pursuant to Federal law.[1]

(E) is for a pattern of medical or other items or services that a person knows or should know are not medically necessary;

(2) knowingly presents or causes to be presented to any person a request for payment which is in violation of the terms of (A) an assignment under section 1395u(b)(3)(B)(ii) of this title, or (B) an agreement with a State agency (or other requirement of a State plan under subchapter XIX) not to charge a person for an item or service in excess of the amount permitted to be charged, or (C) an agreement to be a participating physician or supplier under section 1395u(h)(1) of this title, or (D) an agreement pursuant to section 1395cc(a)(1)(G) of this title;

(3) knowingly gives or causes to be given to any person, with respect to coverage under subchapter XVIII of inpatient hospital services subject to the provisions of section 1395ww of this title, information that he knows or should know is false or misleading, and that could reasonably be expected to influence the decision when to discharge such person or another individual from the hospital;

(4) in the case of a person who is not an organization, agency, or other entity, is excluded from participating in a program under subchapter XVIII or a State health care program in accordance with this subsection or under section 1320a–7 of this title and who, at the time of a violation of this subsection—

(A) retains a direct or indirect ownership or control interest in an entity that is participating in a program under subchapter XVIII or a State health care program, and who knows or should know of the action constituting the basis for the exclusion; or

(B) is an officer or managing employee (as defined in section 1320a–5(b) of this title) of such an entity;

(5) offers to or transfers remuneration to any individual eligible for benefits under subchapter XVIII of this chapter, or under a State health care program (as defined in section 1320a–7(h) of this title) that such person knows or should know is likely to influence such individual to order or receive from a particular provider, practitioner, or supplier any item or service for which payment may be made, in whole or in part, under subchapter XVIII, or a State health care program (as so defined);

(6) arranges or contracts (by employment or otherwise) with an individual or entity that the person knows or should know is excluded from participation in a Federal health care program (as defined in section 1320a–7b(f) of this title), for the provision of items or services for which payment may be made under such a program;

(7) commits an act described in paragraph (1) or (2) of section 1320a–7b(b) of this title;

(8)[2] knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim for payment for items and services furnished under a Federal health care program; or[3]

(9)[4] fails to grant timely access, upon reasonable request (as defined by the Secretary in regulations), to the Inspector General of the Department of Health and Human Services, for the purpose of audits, investigations, evaluations, or other statutory functions of the Inspector General of the Department of Health and Human Services;

(8)[2] orders or prescribes a medical or other item or service during a period in which the person was excluded from a Federal health care program (as so defined), in the case where the person knows or should know that a claim

[1] So in original. Probably should be ''law, or''.

[2] So in original. Two pars. (8) have been enacted.

[3] So in original. The word ''or'' probably should not appear.

[4] So in original. Two pars. (9) have been enacted.