

pendent evaluation of the use of predictive analytics technologies under the Medicare fee-for-service program and Medicaid and CHIP. The evaluation shall include an analysis with respect to each such program of the items required for the third year implementation report under subsection (e)(3).

(2) Report

Not later than 18 months after the evaluation required under paragraph (1) is initiated, the Secretary shall submit a report to Congress on the evaluation that shall include the results of the evaluation, the Secretary's response to such results and, to the extent the Secretary determines appropriate, recommendations for legislation or administrative actions.

(g) Waiver authority

The Secretary may waive such provisions of titles XI, XVIII, XIX, and XXI of the Social Security Act [42 U.S.C. 1301 et seq., 1395 et seq., 1396 et seq., 1397aa et seq.], including applicable prompt payment requirements under titles XVIII and XIX of such Act, as the Secretary determines to be appropriate to carry out this section.

(h) Funding

(1) Appropriation

Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Secretary to carry out this section, \$100,000,000 for the period beginning January 1, 2011, to remain available until expended.

(2) Reservations

(A) Independent evaluation

The Secretary shall reserve not more than 5 percent of the funds appropriated under paragraph (1) for purposes of conducting the independent evaluation required under subsection (f).

(B) Application to Medicaid and CHIP

The Secretary shall reserve such portion of the funds appropriated under paragraph (1) as the Secretary determines appropriate for purposes of providing assistance to States for administrative expenses in the event of the expansion of predictive analytics technologies to claims under Medicaid and CHIP.

(i) Definitions

In this section:

(1) Commonwealths and territories

The term "commonwealth and territories" includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States in which the Medicare fee-for-service program, Medicaid, or CHIP operates.

(2) CHIP

The term "CHIP" means the Children's Health Insurance Program established under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).

(3) Medicaid

The term "Medicaid" means the program to provide grants to States for medical assistance programs established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(4) Medicare beneficiary

The term "Medicare beneficiary" means an individual enrolled in the Medicare fee-for-service program.

(5) Medicare fee-for-service program

The term "Medicare fee-for-service program" means the original medicare fee-for-service program under parts A and B of title XVIII of the Social Security Act (42 U.S.C. 1395[c] et seq.; 1395j et seq.).

(6) Medicare provider

The term "Medicare provider" means a provider of services (as defined in subsection (u) of section 1861 of the Social Security Act (42 U.S.C. 1395x)) and a supplier (as defined in subsection (d) of such section).

(7) Secretary

The term "Secretary" means the Secretary of Health and Human Services, acting through the Administrator of the Centers for Medicare & Medicaid Services.

(8) State

The term "State" means each of the 50 States and the District of Columbia.

(Pub. L. 111-240, title IV, § 4241, Sept. 27, 2010, 124 Stat. 2599.)

Editorial Notes

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (g) and (i)(2), (3), (5), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles XI, XVIII, XIX, and XXI of the Act are classified generally to subchapters XI (§ 1301 et seq.), XVIII (§ 1395 et seq.), XIX (§ 1396 et seq.), and XXI (§ 1397aa et seq.), respectively, of this chapter. Parts A and B of title XVIII of the Act are classified generally to Parts A (§ 1395c et seq.) and B (§ 1395j et seq.) of subchapter XVIII of this chapter. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

Section was enacted as part of the Small Business Jobs Act of 2010, and not as part of the Social Security Act which comprises this chapter.

§ 1320a-7n. Disclosure of predictive modeling and other analytics technologies to identify and prevent waste, fraud, and abuse

(a) Reference to predictive modeling technologies requirements

For provisions relating to the use of predictive modeling and other analytics technologies to identify and prevent waste, fraud, and abuse with respect to the Medicare program under subchapter XVIII, the Medicaid program under subchapter XIX, and the Children's Health Insurance Program under subchapter XXI, see section 1320a-7m of this title.

(b) Limiting disclosure of predictive modeling technologies

In implementing such provisions under such section 1320a-7m with respect to covered algo-

rithms (as defined in subsection (c)), the following shall apply:

(1) Nonapplication of FOIA

The covered algorithms used or developed for purposes of such section 1320a-7m (including by the Secretary or a State (or an entity operating under a contract with a State)) shall be exempt from disclosure under section 552(b)(3) of title 5.

(2) Limitation with respect to use and disclosure of information by State agencies

(A) In general

A State agency may not use or disclose covered algorithms used or developed for purposes of such section 1320a-7m except for purposes of administering the State plan (or a waiver of the plan) under the Medicaid program under subchapter XIX or the State child health plan (or a waiver of the plan) under the Children's Health Insurance Program under subchapter XXI, including by enabling an entity operating under a contract with a State to assist the State to identify or prevent waste, fraud, and abuse with respect to such programs.

(B) Information security

A State agency shall have in effect data security and control policies that the Secretary finds adequate to ensure the security of covered algorithms used or developed for purposes of such section 1320a-7m and to ensure that access to such information is restricted to authorized persons for purposes of authorized uses and disclosures described in subparagraph (A).

(C) Procedural requirements

State agencies to which information is disclosed pursuant to such section 1320a-7m shall adhere to uniform procedures established by the Secretary.

(c) Covered algorithm defined

In this section, the term "covered algorithm"—

(1) means a predictive modeling or other analytics technology, as used for purposes of section 1320a-7m(a) of this title to identify and prevent waste, fraud, and abuse with respect to the Medicare program under subchapter XVIII, the Medicaid program under subchapter XIX, and the Children's Health Insurance Program under subchapter XXI; and

(2) includes the mathematical expressions utilized in the application of such technology and the means by which such technology is developed.

(Aug. 14, 1935, ch. 531, title XI, §1128K, as added Pub. L. 114-198, title VII, §706(a), July 22, 2016, 130 Stat. 753.)

§ 1320a-8. Civil monetary penalties and assessments for subchapters II, VIII and XVI

(a) False statements or representations of material fact; proceedings to exclude; wrongful conversions by representative payees

(1) Any person (including an organization, agency, or other entity) who—

(A) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under subchapter II or benefits or payments under subchapter VIII or XVI, that the person knows or should know is false or misleading,

(B) makes such a statement or representation for such use with knowing disregard for the truth, or

(C) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under subchapter II or benefits or payments under subchapter VIII or XVI, if the person knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading,

shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than \$5,000 for each such statement or representation or each receipt of such benefits or payments while withholding disclosure of such fact, except that in the case of such a person who receives a fee or other income for services performed in connection with any such determination (including a claimant representative, translator, or current or former employee of the Social Security Administration) or who is a physician or other health care provider who submits, or causes the submission of, medical or other evidence in connection with any such determination, the amount of such penalty shall be not more than \$7,500. Such person also shall be subject to an assessment, in lieu of damages sustained by the United States because of such statement or representation or because of such withholding of disclosure of a material fact, of not more than twice the amount of benefits or payments paid as a result of such a statement or representation or such a withholding of disclosure. In addition, the Commissioner of Social Security may make a determination in the same proceeding to recommend that the Secretary exclude, as provided in section 1320a-7 of this title, such a person who is a medical provider or physician from participation in the programs under subchapter XVIII.

(2) For purposes of this section, a material fact is one which the Commissioner of Social Security may consider in evaluating whether an applicant is entitled to benefits under subchapter II or subchapter VIII, or eligible for benefits or payments under subchapter XVI.

(3) Any person (including an organization, agency, or other entity) who, having received, while acting in the capacity of a representative payee pursuant to section 405(j), 1007, or 1383(a)(2) of this title, a payment under subchapter II, VIII, or XVI for the use and benefit of another individual, converts such payment, or any part thereof, to a use that such person knows or should know is other than for the use and benefit of such other individual shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty