

L. 99-643, set out as a note under section 1396a of this title.

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272, see section 1895(e) of Pub. L. 99-514, set out as a note under section 162 of Title 26, Internal Revenue Code.

REFERENCES TO PROVISIONS OF PART A OF SUBCHAPTER IV CONSIDERED REFERENCES TO SUCH PROVISIONS AS IN EFFECT JULY 16, 1996

For provisions that certain references to provisions of part A (§601 et seq.) of subchapter IV of this chapter be considered references to such provisions of part A as in effect July 16, 1996, see section 1396u-1(a) of this title.

§ 1396w. Asset verification through access to information held by financial institutions

(a) Implementation

(1) In general

Subject to the provisions of this section, each State shall implement an asset verification program described in subsection (b), for purposes of determining or redetermining the eligibility of an individual for medical assistance under the State plan under this subchapter.

(2) Plan submittal

In order to meet the requirement of paragraph (1), each State shall—

(A) submit not later than a deadline specified by the Secretary consistent with paragraph (3), a State plan amendment under this subchapter that describes how the State intends to implement the asset verification program; and

(B) provide for implementation of such program for eligibility determinations and redeterminations made on or after 6 months after the deadline established for submittal of such plan amendment.

(3) Phase-in

(A) In general

(i) Implementation in current asset verification demo States

The Secretary shall require those States specified in subparagraph (C) (to which an asset verification program has been applied before June 30, 2008) to implement an asset verification program under this subsection by the end of fiscal year 2009.

(ii) Implementation in other States

The Secretary shall require other States to submit and implement an asset verification program under this subsection in such manner as is designed to result in the application of such programs, in the aggregate for all such other States, to enrollment of approximately, but not less than, the following percentage of enrollees, in the aggregate for all such other States, by the end of the fiscal year involved:

(I) 12.5 percent by the end of fiscal year 2009.

(II) 25 percent by the end of fiscal year 2010.

(III) 50 percent by the end of fiscal year 2011.

(IV) 75 percent by the end of fiscal year 2012.

(V) 100 percent by the end of fiscal year 2013.

(iii) Implementation in Puerto Rico

The Secretary shall require Puerto Rico to implement an asset verification program under this subsection by January 1, 2026.

(B) Consideration

In selecting States under subparagraph (A)(ii), the Secretary shall consult with the States involved and take into account the feasibility of implementing asset verification programs in each such State.

(C) States specified

The States specified in this subparagraph are California, New York, and New Jersey.

(D) Construction

Nothing in subparagraph (A)(ii) shall be construed as preventing a State from requesting, and the Secretary from approving, the implementation of an asset verification program in advance of the deadline otherwise established under such subparagraph.

(4) Exemption of certain territories

This section shall only apply to the 50 States, the District of Columbia, and Puerto Rico.

(b) Asset verification program

(1) In general

For purposes of this section, an asset verification program means a program described in paragraph (2) under which a State—

(A) requires each applicant for, or recipient of, medical assistance under the State plan under this subchapter on the basis of being aged, blind, or disabled to provide authorization by such applicant or recipient (and any other person whose resources are required by law to be disclosed to determine the eligibility of the applicant or recipient for such assistance) for the State to obtain (subject to the cost reimbursement requirements of section 1115(a) of the Right to Financial Privacy Act¹ [12 U.S.C. 3415] but at no cost to the applicant or recipient) from any financial institution (within the meaning of section 1101(1) of such Act [12 U.S.C. 3401(1)]) any financial record (within the meaning of section 1101(2) of such Act) held by the institution with respect to the applicant or recipient (and such other person, as applicable), whenever the State determines the record is needed in connection with a determination with respect to such eligibility for (or the amount or extent of) such medical assistance; and

(B) uses the authorization provided under subparagraph (A) to verify the financial resources of such applicant or recipient (and such other person, as applicable), in order to determine or redetermine the eligibility of

¹ See References in Text note below.

such applicant or recipient for medical assistance under the State plan.

(2) Program described

A program described in this paragraph is a program for verifying individual assets in a manner consistent with the approach used by the Commissioner of Social Security under section 1383(e)(1)(B)(ii) of this title.

(c) Duration of authorization

Notwithstanding section 1104(a)(1) of the Right to Financial Privacy Act¹ [12 U.S.C. 3404(a)(1)], an authorization provided to a State under subsection (b)(1) shall remain effective until the earliest of—

- (1) the rendering of a final adverse decision on the applicant's application for medical assistance under the State's plan under this subchapter;
- (2) the cessation of the recipient's eligibility for such medical assistance; or
- (3) the express revocation by the applicant or recipient (or such other person described in subsection (b)(1), as applicable) of the authorization, in a written notification to the State.

(d) Treatment of Right to Financial Privacy Act requirements

(1) An authorization obtained by the State under subsection (b)(1) shall be considered to meet the requirements of the Right to Financial Privacy Act¹ for purposes of section 1103(a) of such Act [12 U.S.C. 3403(a)], and need not be furnished to the financial institution, notwithstanding section 1104(a) of such Act [12 U.S.C. 3404(a)].

(2) The certification requirements of section 1103(b) of the Right to Financial Privacy Act¹ [12 U.S.C. 3403(b)] shall not apply to requests by the State pursuant to an authorization provided under subsection (b)(1).

(3) A request by the State pursuant to an authorization provided under subsection (b)(1) is deemed to meet the requirements of section 1104(a)(3) of the Right to Financial Privacy Act¹ [12 U.S.C. 3404(a)(3)] and of section 1102 of such Act [12 U.S.C. 3402], relating to a reasonable description of financial records.

(e) Required disclosure

The State shall inform any person who provides authorization pursuant to subsection (b)(1)(A) of the duration and scope of the authorization.

(f) Refusal or revocation of authorization

If an applicant for, or recipient of, medical assistance under the State plan under this subchapter (or such other person described in subsection (b)(1), as applicable) refuses to provide, or revokes, any authorization made by the applicant or recipient (or such other person, as applicable) under subsection (b)(1)(A) for the State to obtain from any financial institution any financial record, the State may, on that basis, determine that the applicant or recipient is ineligible for medical assistance.

(g) Use of contractor

For purposes of implementing an asset verification program under this section, a State may select and enter into a contract with a pub-

lic or private entity meeting such criteria and qualifications as the State determines appropriate, consistent with requirements in regulations relating to general contracting provisions and with section 1396b(i)(2) of this title. In carrying out activities under such contract, such an entity shall be subject to the same requirements and limitations on use and disclosure of information as would apply if the State were to carry out such activities directly.

(h) Technical assistance

The Secretary shall provide States with technical assistance to aid in implementation of an asset verification program under this section.

(i) Reports

A State implementing an asset verification program under this section shall furnish to the Secretary such reports concerning the program, at such times, in such format, and containing such information as the Secretary determines appropriate.

(j) Treatment of program expenses

Notwithstanding any other provision of law, reasonable expenses of States in carrying out the program under this section shall be treated, for purposes of section 1396b(a) of this title, in the same manner as State expenditures specified in paragraph (7) of such section.

(k) Reduction in FMAP after 2020 for non-compliant States

(1) In general

With respect to a calendar quarter, the Federal medical assistance percentage otherwise determined under section 1396d(b) of this title for—

(A) a non-compliant State that is one of the 50 States or the District of Columbia shall be reduced—

- (i) for calendar quarters in 2021 and 2022, by 0.12 percentage points;
- (ii) for calendar quarters in 2023, by 0.25 percentage points;
- (iii) for calendar quarters in 2024, by 0.35 percentage points; and
- (iv) for calendar quarters in 2025 and each year thereafter, by 0.5 percentage points; and

(B) a non-compliant State that is Puerto Rico shall be reduced—

- (i) for calendar quarters in fiscal year 2026 beginning on or after January 1, 2026, by 0.12 percentage points;
- (ii) for calendar quarters in fiscal year 2027, by 0.25 percentage points;
- (iii) for calendar quarters in fiscal year 2028, by 0.35 percentage points; and
- (iv) for calendar quarters in fiscal year 2029 and each fiscal year thereafter, by 0.5 percentage points.

(2) Non-compliant State defined

For purposes of this subsection, the term “non-compliant State” means a State—

- (A) that is one of the 50 States, the District of Columbia, or Puerto Rico;
- (B) with respect to which the Secretary has not approved a State plan amendment submitted under subsection (a)(2); and

(C) that is not operating, on an ongoing basis, an asset verification program in accordance with this section.

(Aug. 14, 1935, ch. 531, title XIX, §1940, as added Pub. L. 110-252, title VII, §7001(d)(1), June 30, 2008, 122 Stat. 2391; amended Pub. L. 116-3, §4, Jan. 24, 2019, 133 Stat. 7; Pub. L. 117-328, div. FF, title V, §5101(c), Dec. 29, 2022, 136 Stat. 5935.)

Editorial Notes

REFERENCES IN TEXT

The Right to Financial Privacy Act, referred to in subsec. (d)(1), probably means the Right to Financial Privacy Act of 1978, title XI of Pub. L. 95-630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to chapter 35 (§3401 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 3401 of Title 12 and Tables.

AMENDMENTS

2022—Subsec. (a)(3)(A)(iii). Pub. L. 117-328, §5101(c)(1)(A), added cl. (iii).

Subsec. (a)(4). Pub. L. 117-328, §5101(c)(1)(B), substituted “Exemption of certain territories” for “Exemption of territories” in heading and “, the District of Columbia, and Puerto Rico” for “and the District of Columbia” in text.

Subsec. (k)(1). Pub. L. 117-328, §5101(c)(2)(A), in introductory provisions, struck out “beginning on or after January 1, 2021” after “With respect to a calendar quarter”; substituted “for—” and subpar. (A) for “for a non-compliant State shall be reduced—”; redesignated former subpars. (A) to (D) as cls. (i) to (iv), respectively, of subpar. (A) and realigned margins; and added subpar. (B).

Subsec. (k)(2)(A). Pub. L. 117-328, §5101(c)(2)(B), substituted “, the District of Columbia, or Puerto Rico” for “or the District of Columbia”.

2019—Subsec. (k). Pub. L. 116-3 added subsec. (k).

§ 1396w-1. Medicaid Improvement Fund

(a) Establishment

The Secretary shall establish under this subchapter a Medicaid Improvement Fund (in this section referred to as the “Fund”) which shall be available to the Secretary to improve the management of the Medicaid program by the Centers for Medicare & Medicaid Services, including oversight of contracts and contractors and evaluation of demonstration projects, and, in accordance with subsection (b)(3), for the purposes of subparagraph (B) of such subsection. Payments made for activities under this subsection shall be in addition to payments that would otherwise be made for such activities.

(b) Funding

(1) In general

There shall be available to the Fund, for expenditures from the Fund for fiscal year 2023 and thereafter, \$0.

(2) Funding limitation

Amounts in the Fund pursuant to paragraph (1) shall be available in advance of appropriations but only if the total amount obligated from the Fund does not exceed the amount available to the Fund under paragraph (1). Amounts in the Fund pursuant to paragraph (3) shall be available in advance of appropriations but only if the total amount obligated

from the Fund does not exceed the amount available to the Fund under such paragraph (3). The Secretary may obligate funds from the Fund only if the Secretary determines (and the Chief Actuary of the Centers for Medicare & Medicaid Services and the appropriate budget officer certify) that there are available in the Fund sufficient amounts to cover all such obligations incurred consistent with the previous sentences.

(3) Additional funding for State activities relating to mechanized claims systems

(A) In general

In addition to the amount made available under paragraph (1), there shall be available to the Fund, for expenditures from the Fund in accordance with subparagraph (B), for fiscal year 2028 and thereafter, \$7,000,000,000, to remain available until expended.

(B) Purposes

The Secretary shall use amounts made available to the Fund under subparagraph (A) to pay to each State which has a plan approved under this subchapter, for each quarter beginning during or after fiscal year 2025 an amount equal to—

(i) 100 percent minus the percent specified in clause (i) of section 1396b(a)(3)(A) of this title of so much of the sums expended by the State during such quarter as are attributable to the activities described in such clause;

(ii) 100 percent minus the Federal medical assistance percentage applied under clause (iii) of such section of so much of the sums expended during such quarter (as found necessary by the Secretary under such clause) by the State as are attributable to the activities described in such clause; and

(iii) 100 percent minus the percent specified in section 1396b(a)(3)(B) of this title of so much of the sums expended by the State during such quarter as are attributable to the activities described in such section.

(Aug. 14, 1935, ch. 531, title XIX, §1941, as added Pub. L. 110-252, title VII, §7002(b), June 30, 2008, 122 Stat. 2395; amended Pub. L. 111-8, div. F, title II, §226, Mar. 11, 2009, 123 Stat. 784; Pub. L. 111-127, §4, Jan. 27, 2010, 124 Stat. 5; Pub. L. 111-148, title II, §2007(b), Mar. 23, 2010, 124 Stat. 285; Pub. L. 114-198, title VII, §707, July 22, 2016, 130 Stat. 754; Pub. L. 115-120, div. C, §3006, Jan. 22, 2018, 132 Stat. 37; Pub. L. 115-123, div. E, title XII, §53105, Feb. 9, 2018, 132 Stat. 302; Pub. L. 115-271, title V, §5061, Oct. 24, 2018, 132 Stat. 3976; Pub. L. 116-3, §5, Jan. 24, 2019, 133 Stat. 8; Pub. L. 116-29, §2, July 5, 2019, 133 Stat. 1031; Pub. L. 116-59, div. B, title VI, §1604, Sept. 27, 2019, 133 Stat. 1108; Pub. L. 116-69, div. B, title VI, §1602, Nov. 21, 2019, 133 Stat. 1139; Pub. L. 116-159, div. C, title VI, §2602, Oct. 1, 2020, 134 Stat. 738; Pub. L. 116-215, div. B, title III, §1303, Dec. 11, 2020, 134 Stat. 1046; Pub. L. 116-260, div. CC, title IV, §406, Dec. 27, 2020, 134 Stat. 3003; Pub. L. 117-328, div. FF, title V, §5141, Dec. 29, 2022, 136 Stat. 5953.)