

TITLE 42 - THE PUBLIC HEALTH AND WELFARE**CHAPTER 7 - SOCIAL SECURITY****SUBCHAPTER XI - GENERAL PROVISIONS, PEER REVIEW, AND ADMINISTRATIVE SIMPLIFICATION****Part B - Peer Review of Utilization and Quality of Health Care Services****§ 1320c–2. Contracts with utilization and quality control peer review organizations****(a) Establishment and consolidation of geographic areas**

(1) The Secretary shall establish throughout the United States geographic areas with respect to which contracts under this part will be made. In establishing such areas, the Secretary shall use the same areas as established under section 1320c–1 of this title as in effect immediately prior to September 3, 1982, but subject to the provisions of paragraph (2).

(2) As soon as practicable after September 3, 1982, the Secretary shall consolidate such geographic areas, taking into account the following criteria:

(A) Each State shall generally be designated as a geographic area for purposes of paragraph (1).

(B) The Secretary shall establish local or regional areas rather than State areas only where the volume of review activity or other relevant factors (as determined by the Secretary) warrant such an establishment, and the Secretary determines that review activity can be carried out with equal or greater efficiency by establishing such local or regional areas. In applying this subparagraph the Secretary shall take into account the number of hospital admissions within each State for which payment may be made under subchapter XVIII of this chapter or a State plan approved under subchapter XIX of this chapter, with any State having fewer than 180,000 such admissions annually being established as a single statewide area, and no local or regional area being established which has fewer than 60,000 total hospital admissions (including public and private pay patients) under review annually, unless the Secretary determines that other relevant factors warrant otherwise.

(C) No local or regional area shall be designated which is not a self-contained medical service area, having a full spectrum of services, including medical specialists' services.

(b) Organizations entitled to contract with Secretary

(1) The Secretary shall enter into a contract with a utilization and quality control peer review organization for each area established under subsection (a) of this section if a qualified organization is available in such area and such organization and the Secretary have negotiated a proposed contract which the Secretary determines will be carried out by such organization in a manner consistent with the efficient and effective administration of this part. If more than one such qualified organization meets the requirements of the preceding sentence, priority shall be given to any such organization which is described in section 1320c–1 (1)(A) of this title.

(2) (A) Prior to November 15, 1984, the Secretary shall not enter into a contract under this part with any entity which is, or is affiliated with (through management, ownership, or common control), an entity (other than a self-insured employer) which directly or indirectly makes payments to any practitioner or provider whose health care services are reviewed by such entity or would be reviewed by such entity if it entered into a contract with the Secretary under this part. For purposes of this paragraph, an entity shall not be considered to be affiliated with another entity which makes payments (directly or indirectly) to any practitioner or provider, by reason of management, ownership, or common control, if the management, ownership, or common control consists only of members of the governing board being affiliated (through management, ownership, or common control) with a health maintenance organization or competitive medical plan which is an “eligible organization” as defined in section 1395mm (b) of this title.

(B) If, after November 14, 1984, the Secretary determines that there is no other entity available for an area with which the Secretary can enter into a contract under this part, the Secretary may then enter into a contract under this part with an entity described in subparagraph (A) for such area if such entity otherwise meets the requirements of this part.

(3) (A) The Secretary shall not enter into a contract under this part with any entity which is, or is affiliated with (through management, ownership, or common control), a health care facility, or association of such facilities, within the area served by such entity or which would be served by such entity if it entered into a contract with the Secretary under this part.

(B) For purposes of subparagraph (A), an entity shall not be considered to be affiliated with a health care facility or association of facilities by reason of management, ownership, or common control if the management, ownership, or common control consists only of not more than 20 percent of the members of the governing board of the entity being affiliated (through management, ownership, or common control) with one or more of such facilities or associations.

(c) Terms of contract

Each contract with an organization under this section shall provide that—

(1) the organization shall perform the functions set forth in section 1320c-3(a) of this section, or may subcontract for the performance of all or some of such functions (and for purposes of paragraphs (2) and (3) of subsection (b) of this section, a subcontract under this paragraph shall not constitute an affiliation with the subcontractor);

(2) the Secretary shall have the right to evaluate the quality and effectiveness of the organization in carrying out the functions specified in the contract;

(3) the contract shall be for an initial term of three years and shall be renewable on a triennial basis thereafter;

(4) if the Secretary intends not to renew a contract, he shall notify the organization of his decision at least 90 days prior to the expiration of the contract term, and shall provide the organization an opportunity to present data, interpretations of data, and other information pertinent to its performance under the contract, which shall be reviewed in a timely manner by the Secretary;

(5) the organization may terminate the contract upon 90 days notice to the Secretary;

(6) the Secretary may terminate the contract prior to the expiration of the contract term upon 90 days notice to the organization if the Secretary determines that—

(A) the organization does not substantially meet the requirements of section 1320c-1 of this title; or

(B) the organization has failed substantially to carry out the contract or is carrying out the contract in a manner inconsistent with the efficient and effective administration of this part, but only after such organization has had an opportunity to submit data and have such data reviewed by the panel established under subsection (d) of this section;

(7) the Secretary shall include in the contract negotiated objectives against which the organization's performance will be judged, and negotiated specifications for use of regional norms, or modifications thereof based on national norms, for performing review functions under the contract; and

(8) reimbursement shall be made to the organization on a monthly basis, with payments for any month being made not later than 15 days after the close of such month.

In evaluating the performance of utilization and quality control peer review organizations under contracts under this part, the Secretary shall place emphasis on the performance of such organizations in educating providers and practitioners (particularly those in rural areas) concerning the review process and criteria being applied by the organization.

(d) Review prior to termination of contract; modification and termination; reviewing panel

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

(1) Prior to making any termination under subsection (c)(6)(B) of this section, the Secretary must provide the organization with an opportunity to provide data, interpretations of data, and other information pertinent to its performance under the contract. Such data and other information shall be reviewed in a timely manner by a panel appointed by the Secretary, and the panel shall submit a report of its findings to the Secretary in a timely manner. The Secretary shall make a copy of the report available to the organization.

(2) The Secretary may accept or not accept the findings of the panel. After the panel has submitted a report with respect to an organization, the Secretary may, with the concurrence of the organization, amend the contract to modify the scope of the functions to be carried out by the organization, or in any other manner. The Secretary may terminate a contract under the authority of subsection (c)(6)(B) of this section upon 90 days notice after the panel has submitted a report, or earlier if the organization so agrees.

(3) A panel appointed by the Secretary under this subsection shall consist of not more than five individuals, each of whom shall be a member of a utilization and quality control peer review organization having a contract with the Secretary under this part. While serving on such panel individuals shall be paid at a per diem rate not to exceed the current per diem equivalent at the time that service on the panel is rendered for grade GS-18 under section 5332 of title 5. Appointments shall be made without regard to title 5.

(4) During the period after the Secretary has given notice of intent to terminate a contract, and prior to the time that the Secretary enters into a contract with another utilization and quality control peer review organization, the Secretary may transfer review responsibilities of the organization under the contract being terminated to another utilization and quality control peer review organization, or to an intermediary or carrier having an agreement under section 1395h of this title or a contract under section 1395u of this title.

(e) Authority of Secretary

(1) Except as provided in paragraph (2), contracting authority of the Secretary under this section may be carried out without regard to any provision of law relating to the making, performance, amendment, or modification of contracts of the United States as the Secretary may determine to be inconsistent with the purposes of this part. The Secretary may use different contracting methods with respect to different geographical areas.

(2) If a peer review organization with a contract under this section is required to carry out a review function in addition to any function required to be carried out at the time the Secretary entered into or renewed the contract with the organization, the Secretary shall, before requiring such organization to carry out such additional function, negotiate the necessary contractual modifications, including modifications that provide for an appropriate adjustment (in light of the cost of such additional function) to the amount of reimbursement made to the organization.

(f) Termination not subject to judicial review

Any determination by the Secretary to terminate or not to renew a contract under this section shall not be subject to judicial review.

(g) Timely provision of hospital data to peer review organizations

The Secretary shall provide that fiscal intermediaries furnish to peer review organizations, each month on a timely basis, data necessary to initiate the review process under section 1320c-3 (a) of this title on a timely basis. If the Secretary determines that a fiscal intermediary is unable to furnish such data on a timely basis, the Secretary shall require the hospital to do so.

(h) Publication of new policy or procedure and general criteria and standards for evaluation; performance comparison report

(1) The Secretary shall publish in the Federal Register any new policy or procedure adopted by the Secretary that affects substantially the performance of contract obligations under this section

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not less than 30 days before the date on which such policy or procedure is to take effect. This paragraph shall not apply to the extent it is inconsistent with a statutory deadline.

(2) The Secretary shall publish in the Federal Register the general criteria and standards used for evaluating the efficient and effective performance of contract obligations under this section and shall provide opportunity for public comment with respect to such criteria and standards.

(3) The Secretary shall regularly furnish each peer review organization with a contract under this section with a report that documents the performance of the organization in relation to the performance of other such organizations.

(i) Preference in contracting with in-State organizations

(1) Notwithstanding any other provision of this section, the Secretary shall not renew a contract with any organization that is not an in-State organization (as defined in paragraph (3)) unless the Secretary has first complied with the requirements of paragraph (2).

(2) (A) Not later than six months before the date on which a contract period ends with respect to an organization that is not an in-State organization, the Secretary shall publish in the Federal Register—

(i) the date on which such period ends; and

(ii) the period of time in which an in-State organization may submit a proposal for the contract ending on such date.

(B) If one or more qualified in-State organizations submits a proposal within the period of time specified under subparagraph (A)(ii), the Secretary shall not automatically renew the current contract on a noncompetitive basis, but shall provide for competition for the contract in the same manner as a new contract under subsection (b) of this section.

(3) For purposes of this subsection, an in-State organization is an organization that has its primary place of business in the State in which review will be conducted (or, which is owned by a parent corporation the headquarters of which is located in such State).

(Aug. 14, 1935, ch. 531, title XI, § 1153, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 382; amended Pub. L. 97–448, title III, § 309(b)(2), Jan. 12, 1983, 96 Stat. 2408; Pub. L. 98–21, title VI, § 602(a), Apr. 20, 1983, 97 Stat. 163; Pub. L. 98–369, div. B, title III, §§ 2334(a), (b), 2347 (c), July 18, 1984, 98 Stat. 1090, 1097; Pub. L. 99–272, title IX, §§ 9402(b), 9404 (a), 9406 (a), Apr. 7, 1986, 100 Stat. 200, 201; Pub. L. 99–509, title IX, § 9352(a)(1), Oct. 21, 1986, 100 Stat. 2044; Pub. L. 100–203, title IV, §§ 4091(a)(2)(A), (b)(1), (2), 4092 (a), 4094 (d)(1), Dec. 22, 1987, 101 Stat. 1330–134, 1330–135, 1330–137.)

Prior Provisions

A prior section 1320c–2, act Aug. 14, 1935, ch. 531, title XI, § 1153, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1432, related to review pending designation of a Professional Standards Review Organization in a given area, prior to the general revision of this part by Pub. L. 97–248.

Amendments

1987—Subsec. (c). Pub. L. 100–203, § 4094(d)(1), inserted after and below par. (8) the following: “In evaluating the performance of utilization and quality control peer review organizations under contracts under this part, the Secretary shall place emphasis on the performance of such organizations in educating providers and practitioners (particularly those in rural areas) concerning the review process and criteria being applied by the organization.”

Subsec. (c)(3). Pub. L. 100–203, § 4091(a)(2)(A), substituted “three” for “two” and “triennial” for “biennial”.

Subsec. (e). Pub. L. 100–203, § 4091(b)(2), designated existing provisions as par. (1), substituted “Except as provided in paragraph (2), contracting” for “Contracting”, and added par. (2).

Subsec. (h). Pub. L. 100–203, § 4091(b)(1), added subsec. (h).

Subsec. (i). Pub. L. 100–203, § 4092(a), added subsec. (i).

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1986—Subsec. (b)(2)(A). Pub. L. 99–272, § 9404(a), substituted “consists only of members of the governing board” for “consists only of one individual member of the governing board”.

Subsec. (c)(8). Pub. L. 99–272, § 9402(b), amended par. (8) generally. Prior to amendment, par. (8) read as follows: “reimbursement shall be made to the organization in accordance with the terms of the contract.”

Subsec. (d)(4). Pub. L. 99–272, § 9406(a), added par. (4).

Subsec. (g). Pub. L. 99–509 added subsec. (g).

1984—Subsec. (b)(2)(A). Pub. L. 98–369, § 2347(c)(1), substituted “Prior to November 15, 1984” for “During the first twelve months in which the Secretary is entering into contracts under this section”.

Pub. L. 98–369, § 2334(b), inserted “(other than a self-insured employer)” and provision that for purposes of this paragraph an entity shall not be considered to be affiliated with another entity which makes payments (directly or indirectly) to any practitioner or provider, by reason of management, ownership, or common control, if the management, ownership, or common control consists only of one individual member of the governing board being affiliated (through management, ownership, or common control) with a health maintenance organization or competitive medical plan which is an “eligible organization” as defined in section 1395mm (b) of this title.

Subsec. (b)(2)(B). Pub. L. 98–369, § 2347(c)(2), substituted “after November 14, 1984” for “after the expiration of the twelve-month period referred to in subparagraph (A)”.

Subsec. (b)(2)(C). Pub. L. 98–369, § 2347(c)(3), struck out subpar. (C) which provided that the twelve-month period formerly referred to in subpar. (A) would be deemed to have begun not later than October 1983.

Subsec. (b)(3). Pub. L. 98–369, § 2334(a), designated existing provisions as subpar. (A) and added subpar. (B).

1983—Subsec. (b)(2)(C). Pub. L. 98–21 added subpar. (C).

Subsec. (d). Pub. L. 97–448 substituted reference to “subsection (c)(6)(B)” for “subsection (c)(5)(B)” and “subsection (c)(5)(C)” in pars. (1) and (2), respectively.

Effective Date of 1987 Amendment

Section 4091(a)(2)(B) of Pub. L. 100–203 provided that: “The amendment made by subparagraph (A) [amending this section] shall apply with respect to contracts entered into or renewed on or after the date of the enactment of this Act [Dec. 22, 1987].”

Section 4091(b)(3) of Pub. L. 100–203 provided that: “The amendment made by paragraphs (1) and (2) [amending this section] shall become effective on the date of enactment of this Act [Dec. 22, 1987].”

Section 4092(b) of Pub. L. 100–203 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to contracts scheduled to be renewed on or after the first day of the eighth month to begin after the date of enactment of this Act [Dec. 22, 1987].”

Section 4094(d)(2) of Pub. L. 100–203 provided that: “The amendment made by paragraph (1) [amending this section] shall apply to contracts under part B of title XI of the Social Security Act [this part] as of January 1, 1988.”

Effective Date of 1986 Amendments

Section 9352(c)(1) of Pub. L. 99–509 provided that: “The Secretary of Health and Human Services shall implement the amendment made by subsection (a) [amending this section and section 1395h of this title] not later than 6 months after the date of the enactment of this Act [Oct. 21, 1986].”

Section 9402(c)(2) of Pub. L. 99–272 provided that: “The amendment made by subsection (b) [amending this section] shall apply to contracts entered into or renewed on or after the date of the enactment of this Act [Apr. 7, 1986].”

Section 9404(b) of Pub. L. 99–272 provided that: “The amendment made by this section [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].”

Section 9406(b) of Pub. L. 99–272 provided that: “The amendment made by this section [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].”

Effective Date of 1984 Amendment

Section 2334(c) of Pub. L. 98–369 provided that: “The amendments made by this section [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984].”

Section 2347(d) of Pub. L. 98–369 provided that: “The provisions of, and amendments made by, this section [amending this section and section 1395cc of this title and enacting provisions set out as a note under section 1395cc of this title] shall become effective on the date of the enactment of this Act [July 18, 1984].”

Effective Date of 1983 Amendments

Amendment by Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital’s cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was added by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

References in Other Laws to GS–16, 17, or 18 Pay Rates

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

Extensions of Peer Review Contract Period; One-Time Extensions To Permit Staggering of Expiration Dates

Section 4091(a)(1) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(j)(1), July 1, 1988, 102 Stat. 790, provided that:

“(A) In general.—In order to permit the Secretary of Health and Human Services an adequate time to complete contract renewal negotiations with utilization and quality control peer review organizations under part B of title XI of the Social Security Act [this part] and to provide for a staggered period of contract expiration dates, notwithstanding section 1153(c) of such Act [subsec. (c) of this section], the Secretary may provide for extensions of existing contracts, but the total of such extensions may not exceed 24 months for any contract.

“(B) Effective date.—The amendment made by subparagraph (A) shall apply to contracts expiring on or after the date of the enactment of this Act [Dec. 22, 1987].”