

TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 7 - SOCIAL SECURITY
SUBCHAPTER XI - GENERAL PROVISIONS, PEER REVIEW, AND ADMINISTRATIVE SIMPLIFICATION
Part A - General Provisions

§ 1320b–3. Applicants or recipients under public assistance programs not to be required to make election respecting certain veterans’ benefits

(a) Supplemental Security Income program

Notwithstanding any other provision of law (but subject to subsection (b) of this section), no individual who is an applicant for or recipient of aid or assistance under a State plan approved under subchapter I, X, XIV, or XVI of this chapter, or of benefits under the Supplemental Security Income program established by subchapter XVI of this chapter shall—

- (1) be required, as a condition of eligibility for (or of continuing to receive) such aid, assistance, or benefits, to make an election under section 306 of the Veterans’ and Survivors’ Pension Improvement Act of 1978 with respect to pension paid by the Secretary of Veterans Affairs, or
- (2) by reason of failure or refusal to make such an election, be denied (or suffer a reduction in the amount of) such aid, assistance, or benefits.

(b) Period of effectiveness

The provisions of subsection (a) of this section shall be applicable only with respect to an individual, who is an applicant for or recipient of aid, assistance, or benefits described in subsection (a) of this section, during a period with respect to which there is in effect—

- (1) in case such individual is an applicant for or recipient of aid or assistance under a State plan referred to in subsection (a) of this section, in the State having such plan, or
- (2) in case such individual is an applicant for or recipient of benefits under the Supplemental Security Income program established by subchapter XVI of this chapter, in the State in which the individual applies for or receives such benefits,

a State plan for medical assistance, approved under subchapter XIX of this chapter, under which medical assistance is available to such individual only for periods for which such individual is a recipient of aid, assistance, or benefits described in subsection (a) of this section.

(Aug. 14, 1935, ch. 531, title XI, § 1133, as added Pub. L. 96–272, title III, § 310(a)(1), June 17, 1980, 94 Stat. 532; amended Pub. L. 102–54, § 13(q)(3)(B)(iii), June 13, 1991, 105 Stat. 279; Pub. L. 104–193, title I, § 108(g)(6), Aug. 22, 1996, 110 Stat. 2168.)

References in Text

Section 306 of the Veterans’ and Survivors’ Pension Improvement Act of 1978, referred to in subsec. (a)(1), is section 306 of Pub. L. 95–588, title III, Nov. 4, 1978, 92 Stat. 2508, which is set out as a note under section 1521 of Title 38, Veterans’ Benefits.

Amendments

1996—Subsec. (a). Pub. L. 104–193 substituted “subchapter I, X, XIV, or XVI of this chapter,” for “subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter,”.

1991—Subsec. (a)(1). Pub. L. 102–54 substituted “Secretary of Veterans Affairs” for “Veterans’ Administration”.

Effective Date of 1996 Amendment

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

Effective Date

Section 310(a)(2) of Pub. L. 96–272 provided that: “The amendment made by paragraph (1) [enacting this section] shall be effective on and after January 1, 1979; except that nothing contained in such amendment shall be construed to authorize or require any payment (or increase in payment) of any aid or assistance or benefits referred to in section 1133(a) of the Social Security Act [subsec. (a) of this section] (as added by paragraph (1)) for any benefit period which begins prior to the date of enactment of this Act [June 17, 1980].”

Continuing Medicaid Eligibility for Certain Recipients of Veterans’ Administration Pensions

Section 310(b)(2) of Pub. L. 96–272 provided that:

“(A) The Administrator shall provide to each individual to whom section 1133 of the Social Security Act (as added by subsection (a)(1) of this section) [this section] applies and who is eligible to make or has made an election under section 306 of the Veterans’ and Survivors’ Pension Improvement Act of 1978 [Pub. L. 95–588, set out as a note under section 1521 of Title 38, Veterans’ Benefits], a written notice, in clear and understandable language, which (i) describes the consequences to such individual (and possibly to such individual’s family), in terms of a determination or possible determination of ineligibility for medical assistance under a State plan approved under title XIX of the Social Security Act [subchapter XIX of this chapter], of making an election with respect to pension under such section 306, (ii) describes the provisions of subparagraph (B) of this paragraph and subsection (a) of this section, (iii) sets forth other relevant information that would be helpful to such individual in making an informed decision concerning such an election or the disaffirmation thereof, and (iv) in the case of any individual who has made such an election, is accompanied by a form prepared for the purpose of enabling such individual to file with the Administrator a written disaffirmation of such an election.

“(B) Notwithstanding any other provision of law—

“(i) any individual to whom section 1133 of the Social Security Act (as added by subsection (a)(1) of this section) [this section] applies may, within the 90-day period beginning with the day that there is mailed to such individual (at such individual’s last known mailing address) a notice referred to in subparagraph (A), disaffirm an election previously made by such individual under section 306 of the Veterans’ and Survivors’ Pension Improvement Act of 1978 [Pub. L. 95–588, set out as a note under section 1521 of Title 38] by completing and mailing to the Administrator the form furnished such individual for such purpose by the Administrator pursuant to subparagraph (A),

“(ii) whenever any such individual files such a disaffirmation with the Administrator, the amount of pension payable to such individual shall be adjusted, beginning with the first calendar month which commences after the receipt by the Administrator of such disaffirmation, to the amount that such pension would have been if such an election by such individual had not been made,

“(iii) any individual who has filed a disaffirmation, pursuant to this subparagraph, of an election made by such individual under such section 306 may again make an election thereunder, but such subsequent election may not be disaffirmed under this subsection, and

“(iv) no indebtedness to the United States, as a result of the disaffirmation by an individual, pursuant to this subparagraph, of an election made by such individual under such section 306 shall be considered to arise from the payment of pension pursuant to such an election.

“(C) The Administrator shall promptly advise the Secretary of Health, Education, and Welfare [now Health and Human Services], and provide identification of the individuals involved and other pertinent information with respect to (i) disaffirmations of elections made by individuals pursuant to subparagraph (B), (ii) individuals who, by failing to disaffirm within the 90-day period prescribed in subparagraph (B), are deemed to have reaffirmed elections previously made, and (iii) individuals who, after having disaffirmed an election under subparagraph (B), subsequently again make an election under section 306 of the Veterans’ and Survivors’ Pension Improvement Act of 1978 [Pub. L. 95–588, set out as a note under section 1521 of Title 38]. The Secretary, upon receipt of any such information with respect to an individual, shall promptly notify the appropriate agencies administering State plans approved under title I, X, XIV, XIX, and part A of title IV of the Social Security Act [subchapters I, X, XIV, XIX, and part A of subchapter IV of this chapter], and State agencies making supplemental payments pursuant to section 1616 of such Act [section 1382e of this title] or an agreement entered into pursuant to section 212(a) of Public Law 93–66 [set out as a note under section 1382 of this title].”