

92d Congress }  
1st Session }

COMMITTEE PRINT

EXCERPTS FROM THE  
SOCIAL SECURITY  
ACT AS AMENDED  
BY H.R. 1



AUGUST 16, 1971

Printed for the use of the Committee on Finance

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(II)



## FOREWORD

When a bill is recommended to the House or Senate by a committee to which it has been referred, the committee is ordinarily expected to show how that bill would change present law. Unfortunately, in the press of time this is often impossible to do for major legislation that would make hundreds of changes in existing law.

H.R. 1 would significantly change important titles of the Social Security Act, with its major amendments to the welfare, social security cash benefits, Medicare, and Medicaid programs. This document shows how H.R. 1 as it passed the House of Representatives would amend the Social Security Act. Portions to be deleted are enclosed in brackets, and new language to be added is shown in italic type. Thus the reader will be able to see the provision of present law and the way the law would read if H.R. 1 were enacted as it passed the House.

This document has been prepared with the assistance of the Social Security Administration and the Social and Rehabilitation Service of the Department of Health, Education, and Welfare.

It is the committee's hope that this document will be useful to persons interested in the legislation.

RUSSELL B. LONG, *Chairman.*

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# SOCIAL SECURITY ACT, AS AMENDED

## AN ACT

To provide for the general welfare by establishing a system of Federal old-age benefits, and by enabling the several States to make more adequate provision for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment compensation laws; to establish a Social Security Board; to raise revenue; and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### TITLE I—GRANTS TO STATES FOR OLD-AGE ASSISTANCE AND MEDICAL ASSISTANCE FOR THE AGED

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#### [Appropriation

[Section 1. For the purpose (a) of enabling each State, as far as practicable under the conditions in such State, to furnish financial assistance to aged needy individuals, (b) of enabling each State, as far as practicable under the conditions in such State, to furnish medical assistance on behalf of aged individuals who are not recipients of old-age assistance but whose income and resources are insufficient to meet the costs of necessary medical services, and (c) of encouraging each State, as far as practicable under the conditions in such State, to furnish rehabilitation and other services to help individuals referred to in clause (a) or (b) to attain or retain capability for self-care, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health, Education, and Welfare (hereinafter referred to as the "Secretary"), State plans for old-age assistance, or for medical assistance for the aged, or for old-age assistance and medical assistance for the aged.

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### [State Old-Age and Medical Assistance Plans

[Sec. 2. (a) A State plan for old-age assistance, or for medical assistance for the aged, or for old-age assistance and medical assistance for the aged must—

[(1) *except to the extent permitted by the Secretary with respect to services,*<sup>1</sup> provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

[(2) provide for financial participation by the State;

[(3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;

[(4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for assistance under the plan is denied or is not acted upon with reasonable promptness;

[(5) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan; and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency;

[(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

[(7) provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the State plan;

[(8) provide that all individuals wishing to make application for assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals;

[(9) provide, if the plan includes assistance for or on behalf of individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions;

[(10) if the State plan includes old-age assistance—

[(A) provide that the State agency shall, in determining need for such assistance, take into consideration any other

<sup>1</sup> Effective upon enactment.

income and resources of an individual claiming old-age assistance, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination, (i) the State agency may disregard not more than \$7.50 per month of any income and (ii) of the first \$80 per month of additional income which is earned the State agency may disregard not more than the first \$20 thereof plus one-half of the remainder;

[(B) include reasonable standards, consistent with the objectives of this title, for determining eligibility for and the extent of such assistance; and

[(C) provide a description of the services (if any) which the State agency makes available to applicants for and recipients of such assistance to help them attain self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services; and

[(11) if the State plan includes medical assistance for the aged—

[(A) provide for inclusion of some institutional and some noninstitutional care and services;

[(B) provide that no enrollment fee, premium, or similar charge will be imposed as a condition of any individual's eligibility for medical assistance for the aged under the plan;

[(C) provide for inclusion, to the extent required by regulations prescribed by the Secretary, of provisions (conforming to such regulations) with respect to the furnishing of such assistance to individuals who are residents of the State but are absent therefrom;

[(D) include reasonable standards, consistent with the objectives of this title, for determining eligibility for and the extent of such assistance; and

[(E) provide that no lien may be imposed against the property of any individual prior to his death on account of medical assistance for the aged paid or to be paid on his behalf under the plan (except pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual), and that there shall be no adjustment or recovery (except, after the death of such individual and his surviving spouse, if any, from such individual's estate) of any medical assistance for the aged correctly paid on behalf of such individual under the plan;

[(12) if the State plan includes assistance to or in behalf of individuals who are patients in institutions for mental diseases—

[(A) provide for having in effect such agreements or other arrangements with State authorities concerned with mental diseases, and, where appropriate, with such institutions, as may be necessary for carrying out the State plan, including arrangements for joint planning and for development of alternate methods of care, arrangements providing assurance of immediate readmittance to institutions where needed for individuals under alternate plans of care, and arrangements

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providing for access to patients and facilities, for furnishing information, and for making reports;

[(B) provide for an individual plan for each such patient to assure that the institutional care provided to him is in his best interests, including, to that end, assurances that there will be initial and periodic review of his medical and other needs, that he will be given appropriate medical treatment within the institution, and that there will be a periodic determination of his need for continued treatment in the institution;

[(C) provide for the development of alternate plans of care, making maximum utilization of available resources, for recipients who would otherwise need care in such institutions, including appropriate medical treatment and other assistance; for services referred to in section 3(a)(4)(A)(i) and (ii) which are appropriate for such recipients and for such patients; and for methods of administration necessary to assure that the responsibilities of the State agency under the State plan with respect to such recipients and such patients will be effectively carried out; and

[(D) provide methods of determining the reasonable cost of institutional care for such patients; and

[(13) if the State plan includes assistance to or in behalf of patients in public institutions for mental diseases, show that the State is making satisfactory progress toward developing and implementing a comprehensive mental health program, including provision for utilization of community mental health centers, nursing homes, and other alternatives to care in public institutions for mental diseases.

[(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a), except that he shall not approve any plan which imposes, as a condition of eligibility for assistance under the plan—

[(1) an age requirement of more than sixty-five years; or

[(2) any residence requirement which (A) in the case of applicants for old-age assistance excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for old-age assistance and has resided therein continuously for one year immediately preceding the application, and (B) in the case of applicants for medical assistance for the aged, excludes any individual who resides in the State; or

[(3) any citizenship requirement which excludes any citizen of the United States.

[(c) Nothing in this title shall be construed to permit a State to have in effect with respect to any period more than one State plan approved under this title.

#### [(Payment to States

[(Sec. 3: (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has a plan approved under this title, for each quarter, beginning with the quarter commencing October 1, 1960—

[(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to the sum of the following

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proportions of the total amounts expended during each month of such quarter as old-age assistance under the State plan (including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof) —

[(A)  $\frac{31}{100}$  of such expenditures, not counting so much of any expenditure with respect to such month as exceeds the product of \$37 multiplied by the total number of recipients of old-age assistance for such month (which total number, for purposes of this subsection, means (i) the number of individuals who received old-age assistance in the form of money payments for such month, plus (ii) the number of other individuals with respect to whom expenditures were made in such month as old-age assistance in the form of medical or any other type of remedial care); plus

[(B) the larger of the following:

[(i) (I) the Federal percentage (as defined in section 1101(a)(8)) of the amount by which such expenditures exceed the amount which may be counted under clause (A), not counting so much of such excess with respect to such month as exceeds the product of \$38 multiplied by the total number of recipients of old-age assistance for such month, plus (II) 15 per centum of the total expended during such month as old-age assistance under the State plan in the form of medical or any other type of remedial care, not counting so much of such expenditure with respect to such month as exceeds the product of \$15 multiplied by the total number of recipients of old-age assistance for such month, or

[(ii) (I) the Federal medical percentage (as defined in section 6(c)) of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditures with respect to such month as exceeds (a) the product of \$52 multiplied by the total number of such recipients of old-age assistance for such month, or (b) if smaller, the total expended as old-age assistance in the form of medical or any other type of remedial care with respect to such month plus the product of \$37 multiplied by such total number of such recipients, plus (II) the Federal percentage of the amount by which the total expended during such month as old-age assistance under the State plan exceeds the amount which may be counted under clause (A) and the preceding provisions of this clause (B) (ii), not counting so much of such excess with respect to such month as exceeds the product of \$38 multiplied by the total number of such recipients of old-age assistance for such month;

[(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to—

[(A) one-half of the total of the sums expended during such quarter as old-age assistance under the State plan (in-

cluding expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof), not counting so much of any expenditure with respect to any month as exceeds \$37.50 multiplied by the total number of recipients of old-age assistance for such month; plus

[(B) the larger of the following amounts: (i) one-half of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds (I) the product of \$45 multiplied by the total number of such recipients of old-age assistance for such month, or (II) if smaller, the total expended as old-age assistance in the form of medical or any other type of remedial care with respect to such month plus the product of \$37.50 multiplied by the total number of such recipients, or (ii) 15 per centum of the total of the sums expended during such quarter as old-age assistance under the State plan in the form of medical or any other type of remedial care, not counting so much of any expenditure with respect to any month as exceeds the product of \$7.50 multiplied by the total number of such recipients of old-age assistance for such month;

[(3) in the case of any State, an amount equal to the Federal medical percentage (as defined in section 6(c)) of the total amounts expended during such quarter as medical assistance for the aged under the State plan (including expenditures for insurance premiums for medical or any other type of remedial care or the cost thereof); and

[(4) in the case of any State whose State plan approved under section 2 meets the requirements of subsection (c) (1), an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan—

[(A) 75 per centum of so much of such expenditures as are for—

[(i) services which are prescribed pursuant to subsection (c) (1) and are provided (in accordance with the next sentence) to applicants for or recipients of assistance under the plan to help them attain or retain capability for self-care, or

[(ii) other services, specified by the Secretary as likely to prevent or reduce dependency, so provided to such applicants or recipients, or

[(iii) any of the services prescribed pursuant to subsection (c) (1), and of the services specified as provided in clause (ii), which the Secretary may specify as appropriate for individuals who, within such period or periods as the Secretary may prescribe, have been or are likely to become applicants for or recipients of assistance under the plan, if such services are requested by such individuals and are provided to such individuals in accordance with the next sentence, or

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[(iv) the training of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

[(B) one-half of so much of such expenditures (not included under subparagraph (A)) as are for services provided (in accordance with the next sentence) to applicants for or recipients of assistance under the plan, and to individuals requesting such services who (within such period or periods as the Secretary may prescribe) have been or are likely to become applicants for or recipients of such assistance; plus

[(C) one-half of the remainder of such expenditures.

The services referred to in subparagraphs (A) and (B) shall, except to the extent specified by the Secretary, include only—

[(D) services provided by the staff of the State agency, or of the local agency administering the State plan in the political subdivision: *Provided*, That no funds authorized under this title shall be available for services defined as vocational rehabilitation services under the Vocational Rehabilitation Act (i) which are available to individuals in need of them under programs for their rehabilitation carried on under a State plan approved under such act, or (ii) which the State agency or agencies administering or supervising the administration of the State plan approved under such Act, are able and willing to provide if reimbursed for the cost thereof pursuant to agreement under subparagraph (E), if provided by such staff, and

[(E) subject to limitations prescribed by the Secretary, services which in the judgment of the State agency cannot be as economically or as effectively provided by the staff of such State or local agency and are not otherwise reasonably available to individuals in need of them, and which are provided, pursuant to agreement with the State agency, by the State health authority or the State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act or by any other State agency which the Secretary may determine to be appropriate (whether provided by its staff or by contract with public (local) or nonprofit private agencies);

except that services described in clause (ii) of subparagraph (D) hereof may be provided only pursuant to agreement with such State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services so approved. The portion of the amount expended for administration of the State plan to which subparagraph (A) applies and the portion thereof to which subparagraphs (B) and (C) apply shall be determined in accordance with such methods and procedures as may be permitted by the Secretary; and

[(5) in the case of any State whose State plan approved under section 2 does not meet the requirements of subsection (c) (1), an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Secretary for the

proper and efficient administration of the State plan, including services referred to in paragraph (4) and provided in accordance with the provisions of such paragraph.

[(b) The method of computing and paying such amounts shall be as follows:

[(1) The Secretary of Health, Education, and Welfare shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of aged individuals in the State, and (C) such other investigation as the Secretary may find necessary.

[(2) The Secretary of Health, Education, and Welfare shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health, Education, and Welfare, (A) reduced or increased, as the case may be, by any sum by which the Secretary of Health, Education, and Welfare finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State under subsection (a) for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health, Education, and Welfare, of the net amount recovered during any prior quarter by the State or any political subdivision thereof with respect to assistance furnished under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health, Education, and Welfare for such prior quarter: *Provided*, That any part of the amount recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased shall not be considered as a basis for reduction under clause (B) of this paragraph.

[(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Health, Education, and Welfare, the amounts so certified.

[(c) (1) In order for a State to qualify for payments under paragraph (4) of subsection (a), its State plan approved under section 2 must provide that the State agency shall make available to applicants for recipients of old-age assistance under such State plan at least those services to help them attain or retain capability for self-care which are prescribed by the Secretary.

[(2) In the case of any State whose State plan included a provision meeting the requirements of paragraph (1), but with respect to which

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the Secretary finds, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, that—

[(A) the provision has been so changed that it no longer complies with the requirements of paragraph (1), or

[(B) in the administration of the plan there is a failure to comply substantially with such provision,

the Secretary shall notify such State agency that further payments will not be made to the State under paragraph (4) of subsection (a) until he is satisfied that there will no longer be any such failure to comply. Until the Secretary is so satisfied further payments with respect to the administration of such State plan shall not be made under paragraph (4) of subsection (a) but shall instead be made, subject to the other provisions of this title, under paragraph (5) of such subsection.

[(d) Notwithstanding the preceding provisions of this section, the amount determined under such provisions for any State for any quarter which is attributable to expenditures with respect to patients in institutions for mental diseases shall be paid only to the extent that the State make a showing satisfactory to the Secretary that total expenditures in the State from Federal, State, and local sources for mental health services (including payments to or in behalf of individuals with mental health problems) under State and local public health and public welfare programs for such quarter exceed the average of the total expenditures in the State from such sources for such services under such programs for each quarter of the fiscal year ending June 30, 1965. For purposes of this subsection, expenditures for such services for each quarter in the fiscal year ending June 30, 1965, in the case of any State shall be determined on the basis of the latest data, satisfactory to the Secretary, available to him at the time of the first determination by him under this subsection for such State; and expenditures for such services for any quarter beginning after December 31, 1965, in the case of any State shall be determined on the basis of the latest data, satisfactory to the Secretary, available to him at the time of the determination under this subsection for such State for such quarter; and determinations so made shall be conclusive for purposes of this subsection.

#### Operation of State Plans

**Sec. 4.** In the case of any State plan which has been approved under this title by the Secretary of Health, Education, and Welfare, if the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan finds—

[(1) that the plan has been so changed as to impose any age, residence, or citizenship requirement prohibited by section 2(b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

[(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 2(a) to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will

be limited to categories under or parts of the State plan not affected by such failure) until the Secretary is satisfied that such prohibited requirement is no longer imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

### Administration

[Sec. 5. [Executed Authorized appropriation for administrative expenses of the Social Security Board under this title for the fiscal year ending June 30, 1936.]

### Definitions

[Sec. 6. (a) For the purposes of this title, the term "old-age assistance" means money payments to, or (if provided in or after the third month before the month in which the recipient makes application for assistance) medical care in behalf of or any type of remedial care recognized under State law in behalf of, needy individuals who are sixty-five years of age or older, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution). Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 2 includes provision for—

[(1) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such assistance through payments described in this sentence;

[(2) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of old-age assistance to be paid (and in conjunction with other income and resources), meet all the need of the individuals with respect to whom such payments are made;

[(3) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible, his capacity for self-care and to manage funds;

[(4) periodic review by such State agency of the determination under paragraph (1) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1111, if and when it appears that such action will best serve the interests of such needy individual; and

[(5) opportunity for a fair hearing before the State agency on the determination referred to in paragraph (1) for any individual with respect to whom it is made.

[(b) For purposes of this title, the term "medical assistance for the aged" means payment of part or all of the cost of the following care

and services (if provided in or after the third month before the month in which the recipient makes application for assistance) for individuals sixty-five years of age or older who are not recipients of old-age assistance (except, for any month, for recipients of old-age assistance who are admitted to or discharged from a medical institution during such month) but whose income and resources are insufficient to meet all of such cost—

- [(1) inpatient hospital services;
- [(2) skilled nursing-home services;
- [(3) physicians' services;
- [(4) outpatient hospital or clinic services;
- [(5) home health care services;
- [(6) private duty nursing services;
- [(7) physical therapy and related services;
- [(8) dental services;
- [(9) laboratory and X-ray services;
- [(10) prescribed drugs, eyeglasses, dentures, and prosthetic devices;
- [(11) diagnostic, screening, and preventive services; and
- [(12) any other medical care or remedial care recognized under State law;

except that such term does not include any such payments with respect to care or services for any individual who is an inmate of a public institution (except as a patient in a medical institution).

[(c) For purposes of this title, the term "Federal medical percentage" for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 50 per centum as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii; except that (i) the Federal medical percentage shall in no case be less than 50 per centum or more than 80 per centum, and (ii) the Federal medical percentage for Puerto Rico, the Virgin Islands, and Guam shall be 50 per centum. The Federal medical percentage for any State shall be determined and promulgated in accordance with the provisions of subparagraph (B) of section 1101(a)(8) (other than the proviso at the end thereof); except that the Secretary shall, as soon as possible after enactment of the Social Security Amendments of 1960, determine and promulgate the Federal medical percentage for each State—

[(1) for the period beginning October 1, 1960, and ending with the close of June 30, 1961, which promulgation shall be based on the same data with respect to per capita income as the data used by the Secretary in promulgating the Federal percentage (under section 1101(a)(8)) for such State for the fiscal year ending June 30, 1961 (which promulgation of the Federal medical percentage shall be conclusive for such period), and

[(2) for the period beginning July 1, 1961, and ending with the close of June 30, 1963, which promulgation shall be based on the same data with respect to per capita income as the data used by the Secretary in promulgating the Federal percentage (under section 1101(a)(8)) for such State for such period (which promulgation of the Federal medical percentage shall be conclusive for such period).]





## TITLE II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

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### Federal Old-Age and Survivors Insurance Trust Fund and Federal Disability Insurance Trust Fund

**Section 201.** (a) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Old-Age and Survivors Insurance Trust Fund". The Federal Old-Age and Survivors Insurance Trust Fund shall consist of the securities held by the Secretary of the Treasury for the Old-Age Reserve Account and the amount standing to the credit of the Old-Age Reserve Account on the books of the Treasury on January 1, 1940, which securities and amount the Secretary of the Treasury is authorized and directed to transfer to the Federal Old-Age and Survivors Insurance Trust Fund, and, in addition, *such gifts and bequests as may be made as provided in subsection (i) (1),<sup>1</sup> and such amounts as may be appropriated to, or deposited in, the Federal Old-Age and Survivors Insurance Trust Fund as hereinafter provided.* There is hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for the fiscal year ending June 30, 1941, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1) the taxes (including interest, penalties, and additions to the taxes) received under subchapter A of chapter 9 of the Internal Revenue Code of 1939 (and covered into the Treasury) which are deposited into the Treasury by collectors of internal revenue before January 1, 1951; and

(2) the taxes certified each month by the Commissioner of Internal Revenue as taxes received under subchapter A of chapter 9 of such Code which are deposited into the Treasury by collectors of internal revenue after December 31, 1950, and before January 1, 1953, with respect to assessments of such taxes made before January 1, 1951; and

(3) the taxes imposed by subchapter A of chapter 9 of such Code with respect to wages (as defined in section 1426 of such Code), and by chapter 21 (other than sections 3101(b) and 3111(b)) of the Internal Revenue Code of 1954 with respect to wages (as defined in section 3121 of such Code) reported to the Commissioner of Internal Revenue pursuant to section 1420(c) of the Internal Revenue Code of 1939 after December 31, 1950, or to the Secretary of the Treasury or his delegates pursuant to subtitle F of the Internal Revenue Code of 1954 after December 31, 1954, as determined by the Secretary of the Treasury by applying the applicable rates of tax under such subchapter or chapter 21 (other than sections 3101(b) and 3111(b)) to such wages, which wages shall be certified by the Secretary of Health, Education, and Welfare on the basis of the records of wages established and maintained by such Secretary in accordance with such reports, less the amounts specified in clause (1) of subsection (b) of this section; and

(4) the taxes imposed by subchapter E of chapter 1 of the Internal Revenue Code of 1939, with respect to self-employment income (as defined in section 481 of such Code), and by chapter 2 (other than section 1401(b)) of the Internal Revenue Code of

<sup>1</sup> Applies to gifts and bequests received after the date of enactment.

1954 with respect to self-employment income (as defined in section 1402 of such Code) reported to the Commissioner of Internal Revenue on tax returns under such subchapter or to the Secretary of the Treasury, or his delegate on tax returns under subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such subchapter or chapter (other than section 1401(b)) to such self-employment income, which self-employment income shall be certified by the Secretary of Health, Education, and Welfare on the basis of the records of self-employment income established and maintained by the Secretary of Health, Education, and Welfare in accordance with such returns, less the amounts specified in clause (2) of subsection (b) of this section.

The amounts appropriated by clauses (3) and (4) shall be transferred from time to time from the general fund in the Treasury to the Federal Old-Age and Survivors Insurance Trust Fund, and the amounts appropriated by clauses (1) and (2) of subsection (b) shall be transferred from time to time from the general fund in the Treasury to the Federal Disability Insurance Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in clauses (3) and (4) of this subsection, paid to or deposited into the Treasury; and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the taxes specified in such clauses (3) and (4) of this subsection.

(b) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Disability Insurance Trust Fund". The Federal Disability Insurance Trust Fund shall consist *such gifts and bequests as may be made as provided in subsection (i)(1),<sup>1</sup>* and of such amounts as may be appropriated to, or deposited in, such fund as provided in this section. There is hereby appropriated to the Federal Disability Insurance Trust Fund for the fiscal year ending June 30, 1957, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1) (A)  $\frac{1}{2}$  of 1 per centum of the wages (as defined in section 3121 of the Internal Revenue Code of 1954) paid after December 31, 1956, and before January 1, 1966, and reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1954, (B) 0.70 of 1 per centum of the wages (as so defined) paid after December 31, 1965, and before January 1, 1968, and so reported, and (C) 0.95 of 1 per centum of the wages (as so defined) paid after December 31, 1967 and before January 1, 1970, and so reported, [and] (D) 1.10 per centum of the wages (as so defined) paid after December 31, [1969, and so reported] 1969 and before January 1, 1972, and so reported, (E) 0.90 of 1 per centum of the wages (as so defined) paid after December 31, 1971, and before January 1, 1975, and so reported, (F) 1.05 per centum of the wages (as so defined) paid after December 31, 1974, and before January 1, 1977, and so reported, and (G) 1.25 per centum of the wages (as so defined) paid after December 31, 1976, which wages shall be certified by the Secretary of Health, Education, and Welfare on the basis of the records of

<sup>1</sup> Applies to gifts and bequests received after the date of enactment.

wages established and maintained by such Secretary in accordance with such reports; and

(2) (A)  $\frac{3}{8}$  of 1 per centum of the amount of self-employment income (as defined in section 1402 of the Internal Revenue Code of 1954) reported to the Secretary of the Treasury or his delegate on tax returns under subtitle F of the Internal Revenue Code of 1954 for any taxable year beginning after December 31, 1956, and before January 1, 1966, (B) and 0.525 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1966, and before January 1, 1968, and (C) 0.7125 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1967, and before January 1, 1970, [and] (D) 0.825 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1969, and before January 1, 1972, (E) 0.675 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1971, and before January 1, 1975, and (F) 0.735 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1974, which self-employment income shall be certified by the Secretary of Health, Education, and Welfare on the basis of the records of self-employment income established and maintained by the Secretary of Health, Education, and Welfare in accordance with such returns.

(c) With respect to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund (hereinafter in this title called the "Trust Funds") there is hereby created a body to be known as the Board of Trustees of the Trust Funds (hereinafter in this title called the "Board of Trustees") which Board of Trustees shall be composed of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare, all ex officio. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this title called the "Managing Trustee"). The Commissioner of Social Security shall serve as Secretary of the Board of Trustees. Such Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

- (1) Hold the Trust Funds;
- (2) Report to the Congress not later than the first day of April of each year on the operation and status of the Trust Funds during the preceding fiscal year and on their expected operation and status during the next ensuing five fiscal years;
- (3) Report immediately to the Congress whenever the Board of Trustees is of the opinion that the amount of either of the Trust Funds is unduly small;
- (4) Recommend improvements in administrative procedures and policies designed to effectuate the proper coordination of the old-age and survivors insurance and Federal-State unemployment compensation program; and



(5) Review the general policies followed in managing the Trust Funds, and recommend changes in such policies, including necessary changes in the provisions of the law which govern the way in which the Trust Funds are to be managed.

The report provided for in paragraph (2) above shall include a statement of the assets of, and the disbursements made from, the Trust Funds during the preceding fiscal year, an estimate of the expected future income to, and disbursements to be made from, the Trust Funds during each of the next ensuing five fiscal years, and a statement of the actuarial status of the Trust Funds. Such report shall also include an actuarial analysis of the benefit disbursements made from the Federal Old-Age and Survivors Insurance Trust Fund with respect to disabled beneficiaries. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(d) It shall be the duty of the Managing Trustee to invest such portion of the Trust Funds as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Funds. Such obligations issued for purchase by the Trust Funds shall have maturities fixed with due regard for the needs of the Trust Funds and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of four years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest of such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

(e) Any obligation acquired by the Trust Funds (except public-debt obligations issued exclusively to the Trust Funds) may be sold by the Managing Trustee at the market price, and such public-debt obligations may be redeemed at par plus accrued interest.

(f) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund shall be credited to and form a part of the Federal Old-Age and Survivors Insurance Trust Fund and the Disability Insurance Trust Fund, respectively.

(g) (1) (A) There are authorized to be made available for expenditure, out of any or all of the Trust Funds (which for purposes of this paragraph shall include also the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established by title XVIII), such amounts as the Congress may deem appropriate to pay the costs of the part of the administration of this title [and], title XVIII, *and title XX* for which the Secretary of Health, Education, and Welfare is responsible. During each fiscal year or after the close of such fiscal year (or at both times), the Secretary of Health, Education, and Welfare shall analyze the costs of administration of this title [and], title XVIII, *and title XX* during the appropriate part or all of such fiscal year in order to determine the portion of such costs which should be borne by each of the Trust Funds *and (with respect to title XX) by the general revenues of the United States* and shall certify to the Managing Trustee the amount, if any, which should be transferred among such Trust Funds in order to assure that (*after appropriations made pursuant to section 2001, and repayment to the Trust Funds from amounts so appropriated*) each of the Trust Funds *and the general revenues of the United States* bears its proper share of the costs incurred during such fiscal year for the part of the administration of this title [and title XVIII], *title XVIII, and title XX* for which the Secretary of Health, Education, and Welfare is responsible. The Managing Trustee is authorized and directed to transfer any such amount (determined under the preceding sentence) among such Trust Funds in accordance with any certification so made.

(B) The Managing Trustee is directed to pay from the Trust Funds into the Treasury the amounts estimated by him which will be expended, out of moneys appropriated from the general funds in the Treasury, during each calendar quarter by the Treasury Department for the part of the administration of this title and title XVIII for which the Treasury Department is responsible and for the administration of chapters 2 and 21 of the Internal Revenue Code of 1954. Such payments shall be covered into the Treasury as repayment to the account for reimbursement of expenses incurred in connection with such administration of this title and title XVIII and chapters 2 and 21 of the Internal Revenue Code of 1954.

(2) The Managing Trustee is directed to pay from time to time from the Trust Funds into the Treasury the amount estimated by him as taxes imposed under section 3101(a) which are subject to refund under section 6413(c) of the Internal Revenue Code of 1954 with respect to wages (as defined in section 1426 of the Internal Revenue Code of 1939 and section 3121 of the Internal Revenue Code of 1954) paid after December 31, 1950. Such taxes shall be determined on the basis of the records of wages established and maintained by the Secretary of Health, Education, and Welfare in accordance with the wages reported to the Commissioner of Internal Revenue pursuant to section 1420(c) of the Internal Revenue Code of 1939 and to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1954, and the Secretary shall furnish the Managing Trustee such information as may be required by the Trustee for such purpose. The payments by the Managing Trustee shall be covered into the Treasury as repayments to the account for

refunding internal revenue collections. Payments pursuant to the first sentence of this paragraph shall be made from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund in the ratio in which amounts were appropriated to such Trust Funds under clause (3) of subsection (a) of this section and clause (1) of subsection (b) of this section.

(3) Repayments made under paragraph (1) or (2) shall not be available for expenditures but shall be carried to the surplus fund of the Treasury. If it subsequently appears that the estimates under either such paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Managing Trustee in future payments.

(h) Benefit payments required to be made under section 223, and benefit payments required to be made under subsection (b), (c), or (d) of section 202 to individuals entitled to benefits on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits, shall be made only from the Federal Disability Insurance Trust Fund. All other benefit payments required to be made under this title (other than section 226) shall be made only from the Federal Old-Age and Survivors Insurance Trust Fund.

(i) (1) *The Managing Trustee of the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund is authorized to accept on behalf of the United States money gifts and bequests made unconditionally to any one or more of such Trust Funds or to the Department of Health, Education, and Welfare, or any part or officer thereof, for the benefit of any of such Funds or any activity financed through such Funds.*

(2) *Any such gift accepted pursuant to the authority granted in paragraph (1) of this subsection shall be deposited in—*

(A) *the specific trust fund designated by the donor or*

(B) *if the donor has not so designated, the Federal Old-Age and Survivors Insurance Trust Fund.*<sup>1</sup>

## Old-Age and Survivors Insurance Benefit Payments

### Old-Age Insurance Benefits

Sec. 202. (a) (1) Every individual who—

[(1)] (A) is a fully insured individual (as defined in section 214 (a)),

[(2)] (B) has attained age 62, and

[(3)] (C) has filed application for old-age insurance benefits or was entitled to disability insurance benefits for the month preceding the month in which he attained the age of 65.

shall be entitled to an old-age insurance benefit for each month [ ] beginning with the first month [after August 1950] in which such individual becomes so entitled to such insurance benefits and ending with the month preceding the month in which he dies.

(2) *Except as provided in subsection (g) and subsection (w), such individual's old-age insurance benefit for any month shall be equal to his primary insurance amount for such month as determined under*

<sup>1</sup> Applies to gifts and bequests received after the date of enactment.

section 215(a), or as determined under paragraph (3) of this subsection if such paragraph is applicable and its application increases the total of the monthly insurance benefits to which such individual and his spouse are entitled for the month in which the provisions of paragraph (3) are met. If the primary insurance amount to an individual or his spouse for any month is determined under paragraph (3), the primary insurance amount of each of them for such month shall, notwithstanding the preceding sentence, be determined only under paragraph (3).

(3) If an individual and his spouse—

(A) each has at least 20 years of coverage (as determined under the last sentence of section 215(a), with years of coverage determined under clause (i) of such sentence being credited for 1950 and consecutive prior years, and without the application of the last sentence of section 215(b)(2)(C)), taking into account only years occurring during the period beginning with the calendar year in which they were married,

(B) each attained age 62 after 1971,

(C) each is entitled to benefits under this subsection (or section 223), and

(D) each has filed an election to have his primary insurance amount determined under this paragraph,

then the primary insurance amount of such individual and the primary insurance amount of such spouse, for purposes of determining the old-age insurance benefit (prior to the application of subsection (w)) or disability insurance benefit of each of them for any month beginning with January 1972 or, if later, the month in which their elections under subparagraph (D) were filed, and ending with the month preceding the month in which either of them dies or they are divorced, shall be equal to 75 percent of the amount (specified in subparagraph (G)) derived by—

(E) combining the annual wages and self-employment income of such individual and such spouse (including any wages and self-employment income taken into account in a recomputation made under section 215(f)) for each year in which either or both of them had any such wages or self-employment income, up to the maximum amount prescribed in section 215(e) for such year,

(F) computing (under section 215(b) and (d)) an average monthly wage on the basis of the wages and self-employment income determined under subparagraph (E) (or, if any wages and self-employment income have been taken into account in a recomputation under section 215(f), recomputing as provided in section 215(a)(1)(A) and (C) as though the year with respect to which such recomputation is made is the last year of the period specified in section 215(b)(2)(C)), as though all of such wages and self-employment income had been earned or derived by such individual or his spouse, whichever is younger, and

(G) determining (under section 215(a)) an amount equal to the primary insurance amount which would result from the average monthly wage determined under subparagraph (F).

For purposes of subparagraph (F), if an individual or his spouse is entitled to disability insurance benefits, such individual or spouse shall

be deemed to have attained age 62 at the time provided in section 223(a)(2).

(4) No benefits payable under subsections (b), (c), (d), (e), (f), (g), (h), or (i) shall be computed on the basis of a primary insurance amount determined under paragraph (3) of this subsection.

(5) The term "primary insurance amount" as used in the provisions of this title other than this subsection shall not include a primary insurance amount determined under paragraph (3) unless specifically so indicated.<sup>1</sup>

#### Wife's Insurance Benefits

(b) (1) The wife (as defined in section 216(b)) and every divorced wife (as defined in section 216(d)) of an individual entitled to old-age or disability insurance benefits, if such wife or such divorced wife—

(A) has filed application for wife's insurance benefits,

(B) has attained age 62 or (in the case of a wife) has in her care (individually or jointly with such individual) at the time of filing such application a child entitled to a child's insurance benefit on the basis of the wages and self-employment income of such individual,

(C) in the case of a divorced wife, is not married, and

[(D)] (D) in the case of a divorced wife, was receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary, from such individual, or was receiving substantial contributions from such individual (pursuant to a written agreement) or there was in effect a court order for substantial contributions to her support from such individual—

[(i)] (i) if he had a period of disability which did not end before the month in which he became entitled to old-age or disability insurance benefits, at the beginning of such period or at the time he becomes entitled to such benefits, or

[(ii)] (ii) if he did not have such a period of disability, at the time he became entitled to old-age insurance benefits, and—

[(E)] (E) is not entitled to old-age or disability insurance benefits or is entitled to [old-age or disability insurance benefits based on a primary insurance amount] *an old-age or disability insurance benefit* which is less than one-half of the primary insurance amount of such individual,

shall (subject to subsection (s)) be entitled to a wife's insurance benefit for each month, beginning with the first month in which she becomes so entitled to such insurance benefits and ending with the month preceding the first month in which any of the following occurs—

[(F)] (F) she dies,

[(G)] (G) such individual dies,

[(H)] (H) in the case of a wife, they are divorced and either (i) she has not attained age 62, or (ii) she has attained age 62 but has not been married to such individual for a period of 20 years immediately before the date the divorce became effective,

[(I)] (I) in the case of a divorced wife, she marries a person other than such individual,

[(J)] (J) in the case of a wife who has not attained age 62, no child of such individual is entitled to a child's insurance benefit,

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[(K)] (J) she becomes entitled to an old-age or disability insurance benefit [based on a primary insurance amount]<sup>1</sup> which is equal to or exceeds one-half of the primary insurance amount of such individual, or

[(L)] (K) such individual is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.<sup>2</sup>

(2) Except as provided in subsection (q), such wife's insurance benefit for each month shall be equal to one-half of the primary insurance amount of her husband (or, in the case of a divorced wife, her former husband) for such month.

(3) In the case of any divorced wife who marries—

(A) an individual entitled to benefits under subsection (f) or (h) of this section, or

(B) an individual who has attained the age of 18 and is entitled to benefits under subsection (d),

such divorced wife's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) (but subject to subsection (s)), not be terminated by reason of such marriage; except that, in the case of such a marriage to an individual entitled to benefits under subsection (d), the preceding provisions of this paragraph shall not apply with respect to benefits for months after the last month for which such individual is entitled to such benefits under subsection (d) unless he ceases to be so entitled by reason of his death.

#### Husband's Insurance Benefits

(c) (1) The husband (as defined in section 216(f)) of an individual entitled to old-age or disability insurance benefits, if such husband—

(A) has filed application for husband's insurance benefits,

(B) has attained age 62,

(C) was receiving at least one-half of his support, as determined in accordance with regulations prescribed by the Secretary, from such individual—

(i) if she had a period of disability which did not end prior to the month in which she became entitled to old-age or disability insurance benefits, at the beginning of such period or at the time she became entitled to such benefits, or

(ii) if she did not have such a period of disability, at the time she became entitled to such benefits,

and filed proof of such support within two years after the month in which she filed application with respect to such period of disability or after the month in which she became entitled to such benefits, as the case may be, or, if she did not have such a period, two years after the month in which she became entitled to such benefits, and

(D) is not entitled to old-age or disability insurance benefits, or is entitled to [old-age or disability insurance benefits based on a primary insurance amount] *an old-age or disability insurance benefit*<sup>1</sup> which is less than one-half of the primary insurance amount of his wife.

shall be entitled to a husband's insurance benefit for each month, beginning with the first month after August 1950 in which he be-

<sup>1</sup> Applies to benefits for months commencing with the sixth month after month of enactment, subject to paragraph (2) of section 109(d) of the amendments.

<sup>2</sup> Applies to benefits for months after December 31, 1971, on the basis of applications filed on or after date of enactment.

comes so entitled to such insurance benefits and ending with the month preceding the month in which any of the following occurs: he dies, his wife dies, they are divorced, or he becomes entitled to an old-age or disability insurance benefit, [based on a primary insurance amount]<sup>1</sup> which is equal to or exceeds one-half of the primary insurance amount of his wife, or his wife is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

(2) The provisions of subparagraph (C) of paragraph (1) shall (subject to subsection (s)) not be applicable in the case of any husband who—

(A) in the month prior to the month of his marriage to such individual was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (f) or (h);

(B) in the month prior to the month of his marriage to such individual had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d); or

(C) in the month prior to the month of his marriage to such individual he was entitled to, or on application therefor and attainment of the required age (if any) would have been entitled to, a widower's, child's (after attainment of age 18), or parent's insurance annuity under section 5 of the Railroad Retirement Act of 1937, as amended.

(3) Except as provided in subsection (q), such husband's insurance benefit for each month shall be equal to one-half of the primary insurance amount of his wife for such month.

#### Child's Insurance Benefits

(d) (1) Every child (as defined in section 216(e)) of an individual entitled to old-age or disability insurance benefits, or of an individual who dies a fully or currently insured individual if such child—

(A) has filed application for child's insurance benefits,

(B) at the time such application was filed was unmarried and (i) either had not attained the age of 18 or was a full-time student and had not attained the age of 22, or (ii) is under a disability (as defined in section 223(d)) which began before he attained the age of [eighteen] 22, and<sup>2</sup>

(C) was dependent upon such individual—

(i) if such individual is living, at the time such application was filed,

(ii) if such individual has died, at the time of such death,

or

(iii) if such individual had a period of disability which continued until he became entitled to old-age or disability insurance benefits, or (if he has died) until the month of his death, at the beginning of such period of disability or at the time he became entitled to such benefits,

<sup>1</sup> Applies to benefits for months commencing with the sixth month after month of enactment, subject to paragraph (2) of section 109(d) of the amendments.

<sup>2</sup> Applies to benefits payable under section 202 for months after December 1971, except that in the case of an individual not entitled to a benefit for December 1971, benefits will be payable only on the basis of an application filed after Sept. 30, 1971.

shall be entitled to a child's insurance benefit for each month, beginning with the first month after August 1950 in which such child becomes so entitled to such insurance benefits and ending with the month preceding whichever of the following first occurs—

(D) the month in which such child dies, [marries, or is adopted (except for adoption by a stepparent, grandparent, aunt, uncle, brother, or sister subsequent to the death of such fully or currently insured individual),] *or marries,*<sup>1</sup>

(E) the month in which such child attains the age of 18, but only if he (i) is not under a disability (as so defined) at the time he attains such age, and (ii) is not a full-time student during any part of such month.

(F) if such child was not under a disability (as so defined) at the time he attained the age of 18, the earlier of—

(i) the first month during no part of which he is a full-time student, or

(ii) the month in which he attains the age of 22, *but only if he was not under a disability (as so defined) in such earlier month;*<sup>2</sup> or

(G) if such child was under a disability (as so defined) at the time he attained the age of 18, *or if he was not under a disability (as so defined) at such time but was under a disability (as so defined) at or prior to the time he attained (or would attain) the age of 22;*<sup>2</sup> the third month following the month in which he ceases to be under such disability or (if later) the earlier of—

(i) the first month during no part of which he is a full-time student, or

(ii) the month in which he attains the age of 22, *but only if he was not under a disability (as so defined) in such earlier month.*<sup>2</sup>

Entitlement of any child to benefits under this subsection on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits shall also end with the month before the first month for which such individual is not entitled to such benefits unless such individual is, for such later month, entitled to old-age insurance benefits or unless he dies in such month. *No payment under this paragraph may be made to a child who would not meet the definition of disability in section 223(d) except for paragraph (1)(B) thereof for any month in which he engages in substantial gainful activity.*<sup>2</sup>

(2) Such child's insurance benefit for each month shall, if the individual on the basis of whose wages and self-employment income the child is entitled to such benefit has not died prior to the end of such month, be equal to one-half of the primary insurance amount of such individual for such month. Such child's insurance benefit for each month shall, if such individual has died in or prior to such month, be equal to three-fourths of the primary insurance amount of such individual.

(3) A child shall be deemed dependent upon his father or adopting father or his mother or adopting mother at the time specified in

<sup>1</sup> Applies to benefits for months beginning with month of enactment.

<sup>2</sup> Applies to benefits payable under section 202 for month after December 1971, except that in the case of an individual not entitled to a benefit for December 1971, benefits will be payable only on the basis of an application filed after Sept. 30, 1971.



paragraph (1) (C) unless, at such time, such individual was not living with or contributing to the support of such child and—

(A) such child is neither the legitimate nor adopted child of such individual, or

(B) such child has been adopted by some other individual.

For purposes of this paragraph, a child deemed to be a child of a fully or currently insured individual pursuant to section 216(h) (2) (B) or section 216(h) (3) shall be deemed to be the legitimate child of such individual.

(4) A child shall be deemed dependent upon his stepfather or stepmother at the time specified in paragraph (1) (C) if, at such time, the child was living with or was receiving at least one-half of his support from such stepfather or stepmother.

(5) In the case of a child who has attained the age of eighteen and who marries—

(A) an individual entitled to benefits under subsection (a), (b), (e), (f), (g), or (h) of this section or under section 223(a), or

(B) another individual who has attained the age of eighteen and is entitled to benefits under this subsection,

such child's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) but subject to subsection (s), not be terminated by reason of such marriage; except that, in the case of such a marriage to a male individual entitled to benefits under section 223(a) or this subsection, the preceding provisions of this paragraph shall not apply with respect to benefits for months after the last month for which such individual is entitled to such benefits under section 223(a) or this subsection unless (i) he ceases to be so entitled by reason of his death, or (ii) in the case of an individual who was entitled to benefits under section 223(a), he is entitled, for the month following such last month, to benefits under subsection (a) of this section.

(6) A child whose entitlement to child's insurance benefits on the basis of the wages and self-employment income of an insured individual terminated with the month preceding the month in which such child attained the age of 18, or with a subsequent month, may again become entitled to such benefits (provided no events specified in paragraph (1) (D) has occurred) beginning with the first month thereafter [in which he is a full-time student and has not attained the age of 22 if he has filed application for such reentitlement. Such reentitlement shall end with the month preceding whichever of the following first occurs: The first month during no part of which he is a full-time student, the month in which he attains the age of 22, or the first month in which an event specified in paragraph (1) (D) occurs.] in which he—

(A) (i) is a full-time student or is under a disability (as defined in section 223(d)), and (ii) had not attained the age of 22, or

(B) is under a disability (as so defined) which began before the close of the 84th month following the month in which his most recent entitlement to child's insurance benefits terminated because he ceased to be under such disability,

but only if he has filed application for such reentitlement. Such reentitlement shall end with the month preceding whichever of the following first occurs:

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(C) the first month in which an event specified in paragraph (1)(D) occurs;

(D) the earlier of (i) the first month during no part of which he is a full-time student or (ii) the month in which he attains the age of 22, but only if he is not under a disability (as so defined) in such earlier month; or

(E) if he was under a disability (as so defined), the third month following the month in which he ceases to be under such disability or (if later) the earlier of—

(i) the first month during no part of which he is a full-time student, or

(ii) the month in which he attains the age of 22.<sup>1</sup>

(7) For the purposes of this subsection—

(A) A “full-time student” is an individual who is in full-time attendance as a student at an educational institution, as determined by the Secretary (in accordance with regulations prescribed by him) in the light of the standards and practices of the institutions involved, except that no individual shall be considered a “full-time student” if he is paid by his employer while attending an educational institution at the request, or pursuant to a requirement, of his employer.

(B) Except to the extent provided in such regulations, an individual shall be deemed to be a full-time student during any period of nonattendance at an educational institution at which he has been in full-time attendance if (i) such period is 4 calendar months or less, and (ii) he shows to the satisfaction of the Secretary that he intends to continue to be in full-time attendance at an educational institution immediately following such period. An individual who does not meet the requirement of clause (ii) with respect to such period of nonattendance shall be deemed to have met such requirement (as of the beginning of such period) if he is in full-time attendance at an educational institution immediately following such period.

(C) An “educational institution” is (i) a school or college or university operated or directly supported by the United States, or by any State or local government or political subdivision thereof, or (ii) a school or college or university which has been approved by a State or accredited by a State-recognized or nationally-recognized accrediting agency or body, or (iii) a nonaccredited school or college or university whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited.

(D) A child who attains age 22 at a time when he is a full-time student (as defined in subparagraph (A) of this paragraph) but has not (at such time) completed the requirements for, or received, a degree from a four-year college or university shall be deemed (for purposes of determining whether his entitlement to benefits under this subsection has terminated under paragraph (1)(F) and for purposes of determining his initial entitlement to such benefits under clause (ii) of paragraph (1)(B)) not to

<sup>1</sup> Applies to benefits payable under section 202 for months after December 1971, except that in the case of an individual not entitled to a benefit for December 1971, benefits will be payable only on the basis of an application filed after Sept. 30, 1971.

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*have attained such age until the first day of the first month following the end of the quarter or semester in which he is enrolled at such time (or, if the educational institution (as defined in this paragraph) in which he is enrolled is not operated on a quarter or semester system, until the first day of the first month following the completion of the course in which he is so enrolled or until the first day of the third month beginning after such time, whichever first occurs).<sup>1</sup>*

(8) In the case of—

(A) *an individual entitled to old-age insurance benefits (other than an individual referred to in subparagraph (B)), or<sup>2</sup>*

(B) *an individual entitled to disability insurance benefits, or*  
**[(B)]** *an individual entitled to old-age insurance benefits who was entitled to disability insurance benefits for the month preceding the first month for which he was entitled to old-age insurance benefits,*

*a child of such individual adopted after such individual became entitled to such old-age or disability insurance benefits shall be deemed not to meet the requirements of clause (i) or (iii) of paragraph (1)*

(C) *unless such child—*

(C) *is the natural child or stepchild of such individual (including such a child who was legally adopted by such individual), or*

(D) *(i) was legally adopted by such individual [before the end of the 24-month period beginning with the month after the month in which such individual most recently became entitled to disability insurance benefits, but only if—*

**[(i)]** *proceedings for such adoption of the child had been instituted by such individual in or before the month in which began the period of disability of such individual which still exists at the time of such adoption (or, if such child was adopted by such individual after such individual attained age 65, the period of disability of such individual which existed in the month preceding the month in which he attained age 65), or*

**[(ii)]** *such adopted child was living with such individual in such month: or*

**[(E)]** *was legally adopted by such individual—*

**[(i)]** *in an adoption which took place under the supervision of a public or private child-placement agency,*

**[(ii)]** *in an adoption decreed by a court of competent jurisdiction within the United States,*

**[(iii)]** *on a date immediately preceding which such individual had continuously resided for not less than one year within the United States:*

**[(iv)]** *at a time prior to the attainment of age 18 by such child. [in an adoption decreed by a court of competent jurisdiction within the United States,*

*(ii) was living with such individual in the United States and receiving at least one-half of his support from such individual (I) if he is an individual referred to in subparagraph*

<sup>1</sup> Applies to benefits for months after December 1971.

<sup>2</sup> Applies to benefits for months after December 1967 on the basis of an application filed in or after month of enactment, except that with respect to benefits for any month before month of enactment, application must be filed before seventh month of enactment.

(A), for the year immediately before the month in which such individual became entitled to old-age insurance benefits or, if such individual had a period of disability which continued until he had become entitled to old-age insurance benefits, the month in which such period of disability began, or (II) if he is an individual referred to in subparagraph (B), for the year immediately before the month in which began the period of disability of such individual which still exists at the time of adoption (or, if such child was adopted by such individual after such individual attained age 65, the period of disability of such individual which existed in the month preceding the month in which he attained age 65), or the month in which such individual became entitled to disability insurance benefits, and

(iii) had not attained the age of 18 before he began living with such individual.

*In the case of a child who was born in the one-year period during which such child must have been living with and receiving at least one-half of his support from such individual, such child shall be deemed to meet such requirements for such period if, as of the close of such period, such child has lived with such individual in the United States and received at least one-half of his support from such individual for substantially all of the period which begins on the date of birth of such child.<sup>1</sup>*

[(9) If an individual entitled to old-age insurance benefits (but not an individual included under paragraph (8)) adopts a child after such individual becomes entitled to such benefits, such child shall be deemed not to meet the requirements of clause (i) of paragraph (1)(C) unless such child—

[(A) is the natural child or stepchild of such individual (including such a child who was legally adopted by such individual), or

[(B) was legally adopted by such individual before the end of the 24-month period beginning with the month after the month in which such individual became entitled to old-age insurance benefits, but only if—

[(i) such child had been receiving at least one-half of his support from such individual for the year before such individual filed his application for old-age insurance benefits or, if such individual had a period of disability which continued until he had become entitled to old-age insurance benefits, for the year before such period of disability began, and

[(ii) either proceedings for such adoption of the child had been instituted by such individual in or before the month in which the individual filed his application for old-age insurance benefits or such adopted child was living with such individual in such month.]

(9) (A) *A child who is a child of an individual under clause (3) of the first sentence of section 216(e) and is not a child of such individual under clause (1) or (2) of such first sentence shall be deemed not to be dependent on such individual at the time specified in sub-*

<sup>1</sup> Applies to benefits for months after December 1967 on the basis of an application filed in or after month of enactment, except that with respect to benefits for any month before month of enactment, application must be filed before seventh month of enactment.

paragraph (1) (C) of this subsection unless (i) such child was living with such individual in the United States and receiving at least one-half of his support from such individual (I) for the year immediately before the month in which such individual became entitled to old-age insurance benefits or disability insurance benefits or died, or (II) if such individual had a period of disability which continued until he had become entitled to old-age insurance benefits, or disability insurance benefits, or died, for the year immediately before the month in which such period of disability began, and (ii) the period during which such child was living with such individual began before the child attained age 18.

(B) In the case of a child who was born in the one-year period during which such child must have been living with and receiving at least one-half of his support from such individual, such child shall be deemed to meet such requirements for such period if, as of the close of such period, such child has lived with such individual in the United States and received at least one-half of his support from such individual for substantially all of the period which begins on the date of such child's birth.<sup>1</sup>

#### Widow's Insurance Benefits

(e) (1) The widow (as defined in section 216(c)) and every surviving divorced wife (as defined in section 216(d)) of an individual who died a fully insured individual, if such widow or such surviving divorced wife—

(A) is not married,

(B) (i) has attained age 60, or (ii) has attained age 50 but has not attained age 60 and is under a disability (as defined in section 223(d)) which began before the end of the period specified in paragraph (5),

(C) (i) has filed application for widow's insurance benefits, or was [entitled, after attainment of age 62, to wife's insurance benefits,] entitled to wife's insurance benefits, on the basis of the wages and self-employment income of [such individual,] such individual or to an old-age or disability insurance benefit determined under subsection (a) (3),<sup>2</sup> [or] for the month preceding the month in which he died, and<sup>1</sup> (I) has attained age 65 or (II) is not entitled to benefits under subsection (a) (other than under paragraph (3) thereof) or section 223, or<sup>2</sup>

(ii) was entitled, on the basis of such wages and self-employment income, to mother's insurance benefits for the month preceding the month in which she attained age [62]65,<sup>2</sup> and

[(D) in the case of a surviving divorced wife who was not entitled to wife's insurance benefits on the basis of the wages and self-employment income of such individual for the month preceding the month in which he died, was receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary, from such individual, or was receiving substantial contributions from such individual (pursuant to a written agreement) or there was in effect a court order for substantial contributions to her support from such individual.—

<sup>1</sup> Applies to benefits for months after December 1971 on the basis of applications filed on or after date of enactment.

<sup>2</sup> Applies to benefits for months after December 1971.

[(i) at the time of his death (or, if such individual had a period of disability which did not end prior to the month in which he died, at the time such period began or at the time of his death), or

[(ii) at the time he became entitled to old-age insurance benefits or disability insurance benefits (or, if such individual had a period of disability which did not end before the month in which he became entitled to such benefits, at the time such period began or at the time he became entitled to such benefits), and]<sup>1</sup>

[(E)](D) is not entitled to old-age insurance benefits or is entitled to old-age insurance benefits each of which is less than [82½ percent of] the primary insurance amount of such deceased individual, shall be entitled to a widow's insurance benefit for each month, beginning with—

[(F)](E)<sup>1</sup> if she satisfies subparagraph (B) by reason of clause (i) thereof, the first month in which she becomes so entitled to such insurance benefits, or

[(G)](F)<sup>1</sup> if she satisfies subparagraph (B) by reason of clause (ii) thereof—

(i) the first month after her waiting period (as defined in paragraph (6)) in which she becomes so entitled to such insurance benefits, or

(ii) the first month during all of which she is under a disability and in which she becomes so entitled to such insurance benefits, but only if she was previously entitled to insurance benefits under this subsection on the basis of being under a disability and such first month occurs (I) in the period specified in paragraph (5) and (II) after the month in which a previous entitlement to such benefits on such basis terminated,

and ending with the month preceding the first month in which any of the following occurs: she remarries, dies, becomes entitled to an old-age insurance benefit equal to or exceeding [82½ percent of]<sup>2</sup> the primary insurance amount of such deceased individual, or, if she became entitled to such benefits before she attained age 60, the third month following the month in which her disability ceases (unless she attains age [62] 65<sup>2</sup> on or before the last day of such third month).

(2) (A) Except as provided in subsection (q) [and], paragraph (4) of this subsection, and subparagraphs (B) and (C) of this paragraph, such widow's insurance benefit for each month shall be equal to [82½ percent of]<sup>2</sup> the primary insurance amount of such deceased individual.

*(B) If the deceased individual (on the basis of whose wages and self-employment income a widow or surviving divorced wife is entitled to widow's insurance benefits under this subsection) was, at any time, entitled to an old-age insurance benefit which was reduced by reason of the application of subsection (q), the widow's insurance benefit of such widow or surviving divorced wife for any month shall, if the amount of the widow's insurance benefit of such widow or surviving divorced wife (as determined under subparagraph (A) and after application of subsection (q)) is greater than—*

*(i) the amount of the old-age insurance benefit to which such deceased individual would have been entitled (after application*

<sup>1</sup> Applies to benefits for months after December 1971 on the basis of applications filed on or after date of enactment.

<sup>2</sup> Applies to benefits for months after December 1971.

of subsection (q)) for such month if such individual were still living, and

(ii) 82½ percent of the primary insurance amount of such deceased individual,

be reduced to the amount referred to in clause (i), or (if greater) the amount referred to in clause (ii).

(C) In any case where a widow was entitled for the month preceding the month in which the deceased individual died to an old-age insurance benefit or a disability insurance benefit based on a primary insurance amount determined under section 202(a)(3), such widow's insurance benefit for each month shall be determined only on the basis of the wages and self-employment income of her deceased spouse and, for purposes of subparagraph (B), the old-age or disability insurance benefit of the deceased spouse shall be deemed to be the amount it would have been if it had been determined under subsection (a)(1) or section 223, except that after the application of subparagraphs (A) and (B), and subsection 203(a), such widow's insurance benefit shall be not less than the amount of the old-age or disability insurance benefit to which she would be entitled for such month (based on a primary insurance amount determined under subsection (a)(3)) if such individual had not died, disregarding for this purpose the period beginning with the year after the year of such individual's death and any wages and self-employment income paid to or derived by either of them during such period. This subparagraph shall not apply, in the case of a widow who remarries, with respect to the month in which such remarriage occurs or any subsequent month.<sup>1</sup>

(3) In the case of a widow or surviving divorced wife who marries—

(A) an individual entitled to benefits under subsection (f) or (h) of this section, or

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d),

such widow's or surviving divorced wife's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) but subject to subsection (s), not be terminated by reason of such marriage; except that, in the case of such a marriage to an individual entitled to benefits under subsection (d), the preceding provisions of this paragraph shall not apply with respect to benefits for months after the last month for which such individual is entitled to such benefits under subsection (d) unless he ceases to be so entitled by reason of his death.

(4) If a widow, after attaining the age of 60, marries an individual (other than one described in subparagraph (A) or (B) of paragraph (3)), such marriage shall, for purposes of paragraph (1), be deemed not to have occurred; except that, notwithstanding the provisions of paragraph (2) and subsection (q), such widow's insurance benefit for the month in which such marriage occurs and each month thereafter prior to the month in which the husband dies or such marriage is otherwise terminated, shall be equal to one-half of the primary insurance amount of the deceased individual on whose wages and self-employment income such benefit is based;

<sup>1</sup> Applies to benefits for months after December 1971.

(5) The period referred to in paragraph (1)(B)(ii), in the case of any widow or surviving divorced wife, is the period beginning with whichever of the following is the latest:

(A) the month in which occurred the death of the fully insured individual referred to in paragraph (1) on whose wages and self-employment income her benefits are or would be based, or

(B) the last month for which she was entitled to mother's insurance benefits on the basis of the wages and self-employment income of such individual, or

(C) the month in which a previous entitlement to widow's insurance benefits on the basis of such wages and self-employment income terminated because her disability had ceased, and ending with the month before the month in which she attains age 60, or, if earlier, with the close of the eighty-fourth month following the month with which such period began.

(6) The waiting period referred to in paragraph (1) [(G)] (F),<sup>1</sup> in the case of any widow or surviving divorced wife, is the earliest period of ~~six~~ <sup>five</sup><sup>2</sup> consecutive calendar months—

(A) throughout which she has been under a disability, and

(B) which begins not earlier than with whichever of the following is the later: (i) the first day of the ~~eighteenth~~ <sup>seventeenth</sup><sup>2</sup> month before the month in which her application is filed, or (ii) the first day of the ~~sixth~~ <sup>fifth</sup><sup>2</sup> month before the month in which the period specified in paragraph (5) begins.

#### Widower's Insurance Benefits

(f)(1) The widower (as defined in section 216(g) of an individual who died a fully insured individual, if such widower—

(A) has not remarried,

(B) (i) has attained age ~~62~~ <sup>60</sup><sup>2</sup> or (ii) has attained age 50 but has not attained age ~~62~~ <sup>60</sup><sup>2</sup> and is under a disability (as defined in section 223(d)) which began before the end of the period specified in paragraph (6),

(C) has filed application for widower's insurance benefits or was entitled to husband's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which she died, *and (I) has at-*

<sup>1</sup> Applies to benefits for months after December 1971 on the basis of applications filed on or after date of enactment.

<sup>2</sup> Applies with respect to applications for disability insurance benefits under section 223 of the Social Security Act, applications for widow's and widower's insurance benefits based on disability under section 202 of such act, and applications for disability determinations under section 216(i) of such act, filed—

(1) in or after the month in which this act is enacted, or

(2) before the month in which this act is enacted if—

(A) notice of the final decision of the Secretary of Health, Education, and Welfare has not been given to the applicant before such month, or

(B) the notice referred to in subparagraph (A) has been so given before such month but a civil action with respect to such final decision is commenced under section 205(g) of the Social Security Act (whether before, in, or after such month) and the decision in such civil action has not become final before such month;

except that no monthly benefits under title II, of the Social Security Act shall be payable or increased by reason of the amendments made by this section for any month before January 1972.

<sup>3</sup> Applies to benefits for months after December 1971



tained age 65 or (II) is not entitled to benefits under subsection (a) or section 223,<sup>1</sup>

(D) (i) was receiving at least one-half of his support, as determined in accordance with regulations prescribed by the Secretary, from such individual at the time of her death or, if such individual had a period of disability which did not end prior to the month in which she died, at the time such period began or at the time of her death, and filed proof of such support within two years after the date of such death, or, if she had such a period of disability, within two years after the month in which she filed application with respect to such period of disability or two years after the date of such death, as the case may be, or (ii) was receiving at least one-half of his support, as determined in accordance with regulations prescribed by the Secretary from such individual at the time she became entitled to old-age or disability insurance benefits or, if such individual had a period of disability which did not end prior to the month in which she became so entitled, at the time such period began or at the time she became entitled to such benefits, and filed proof of such support within two years after the month in which she became entitled to such benefits, or, if she had such a period of disability, within two years after the month in which she filed application with respect to such period of disability or two years after the month in which she became entitled to such benefits, as the case may be,

(E) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than  $[82\frac{1}{2}$  percent of]<sup>2</sup> the primary insurance amount of his deceased wife, shall be entitled to a widower's insurance benefit for each month, beginning with—

(F) if he satisfies subparagraph (B) by reason of clause (i) thereof, the first month in which he becomes so entitled to such insurance benefits, or

(G) if he satisfies subparagraph (B) by reason of clause (ii) thereof—

(i) the first month after his waiting period (as defined in paragraph (7)) in which he becomes so entitled to such insurance benefits, or

(ii) the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was previously entitled to insurance benefits under this subsection on the basis of being under a disability and such first month occurs (I) in the period specified in paragraph (6) and (II) after the month in which a previous entitlement to such benefits on such basis terminated,

and ending with the month preceding the first month in which any of the following occurs: he remarries, dies, or becomes entitled to an old-age insurance benefit equal to or exceeding  $[82\frac{1}{2}$  percent of]<sup>2</sup> the pri-

<sup>1</sup> Applies to benefits payable under section 202 for months after December 1971, except that in the case of an individual not entitled to a benefit for December 1971, benefits will be payable only on the basis of an application filed in or after the month of enactment.

<sup>2</sup> Applies to benefits for months after December 1971.

mary insurance amount of his deceased wife, [or the third month] or, if he became entitled to such benefits before he attained age 60, the third month<sup>1</sup> following the month in which his disability ceases (unless he attains age [62] 65<sup>2</sup> on or before the last day of such third month).

(2) The provisions of subparagraph (D) of paragraph (1) shall (subject to subsection (s)) not be applicable in the case of any individual who—

(A) in the month prior to the month of his marriage to such individual was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under this subsection or subsection (h);

(B) in the month prior to the month of his marriage to such individual had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d); or

(C) in the month prior to the month of his marriage to such individual he was entitled to, or on application therefor and attainment of the required age (if any), would have been entitled to, a widower's, child's (after attainment of age 18), or parent's insurance annuity under section 5 of the Railroad Retirement Act of 1937, as amended.

(3)(A) Except as provided in subsection (q) [and], paragraph (5) of this subsection, and subparagraphs (B) and (C) of this paragraph, such widower's insurance benefit for each month shall be equal to [82½ percent of]<sup>3</sup> the primary insurance amount of his deceased wife.

(B) If the deceased wife (on the basis of whose wages and self-employment income a widower is entitled to widower's insurance benefits under this subsection) was, at any time, entitled to an old-age insurance benefit which was reduced by reason of the application of subsection (q), the widower's insurance benefit of such widower for any month shall, if the amount of the widower's insurance benefit of such widower (as determined under subparagraph (A) and after application of subsection (q)) is greater than—

(i) the amount of the old-age insurance benefit to which such deceased wife would have been entitled (after application of subsection (q)) for such month if such wife were still living; and

(ii) 82½ percent of the primary insurance amount of such deceased wife; be reduced to the amount referred to in clause (i), or (if greater) the amount referred to in clause (ii).

(C) In any case where a widower was entitled for the month preceding the month in which the deceased individual died to an old-age insurance benefit or a disability insurance benefit based on a primary insurance amount determined under section 202(a)(3), such widower's insurance benefit for each month shall be determined only on the basis of the wages and self-employment income of his deceased spouse and, for purposes of subparagraph (B), the old-age or disability insurance benefit of the deceased spouse shall be deemed to be the amount it would have been if it had been determined under subsection (a)(1)

<sup>1</sup> Applies to benefits payable under section 202 for months after December 1971, except that in the case of an individual not entitled to a benefit for December 1971, benefits will be payable only on the basis of an application filed in or after the month of enactment.

<sup>2</sup> Applies to benefits for months after December 1971.

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or section 223, except that after the application of subparagraphs (A) and (B), and subsection 203(a), such widower's insurance benefit shall be not less than the amount of the old-age or disability insurance benefit to which he would be entitled for such month (based on a primary insurance amount determined under subsection (a) (3)) if such individual had not died, disregarding for this purpose the period beginning with the year after the year of such individual's death and any wages and self-employment income paid to or derived by either of them during such period. This subparagraph shall not apply, in the case of a widower who remarries, with respect to the month in which such remarriage occurs or any subsequent month.<sup>1</sup>

(4) In the case of a widower who remarries—

(A) an individual entitled to benefits under subsection (b), (e), (g), or (h), or

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d),

such widower's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) but subject to subsection (s), not be terminated by reason of such marriage.

(5) If a widower, after attaining the age of [62] 60,<sup>2</sup> marries an individual (other than one described in subparagraph (A) or (B) of paragraph (4)), such marriage shall, for purposes of paragraph (1), be deemed not to have occurred; except that, notwithstanding the provisions of paragraph (3) and subsection (q), such widower's insurance benefit for the month in which such marriage occurs and each month thereafter prior to the month in which the wife dies or such marriage is otherwise terminated, shall be equal to one-half of the primary insurance amount of the deceased individual on whose wages and self-employment income such benefit is based.

(6) The period referred to in paragraph (1) (B) (ii), in the case of any widower, is the period beginning with whichever of the following is the latest:

(A) the month in which occurred the death of the fully insured individual referred to in paragraph (1) on whose wages and self-employment income his benefits are or would be based, or

(B) the month in which a previous entitlement to widower's insurance benefits on the basis of such wages and self-employment income terminated because his disability had ceased, and ending with the month before the month in which he attains age [62] 60,<sup>2</sup> or, if earlier, with the close of the eighty-fourth month following the month with which such period began.

(7) The waiting period referred to in paragraph (1) (G), in the case of any widower, is the earliest period of [six] five<sup>3</sup> consecutive calendar months—

(A) throughout which he has been under a disability, and

(B) which begins not earlier than with whichever of the following is the later: (i) the first day of the [eighteenth] seventeenth<sup>3</sup> month before the month in which his application is filed, or (ii) the first day of the [sixth] fifth<sup>3</sup> month before the month in which the period specified in paragraph (6) begins.

<sup>1</sup> Applies to benefits for months after December 1971.

<sup>2</sup> Applies to benefits payable under section 202 for months after December 1971, except that in the case of an individual not entitled to a benefit for December 1971, benefits will be payable only on the basis of an application filed in or after the month of enactment.

<sup>3</sup> See footnote 2 on page 36.

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## Mother's Insurance Benefits

(g) (1) The widow and every surviving divorced mother (as defined in section 216(d)) of an individual who died a fully or currently insured individual, if such widow or surviving divorced mother—

- (A) is not married,
- (B) is not entitled to a widow's insurance benefit,
- (C) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than three-fourths of the primary insurance amount of such individual,
- (D) has filed application for mother's insurance benefits, or was entitled to wife's insurance benefits on the basis of the wages and self-employment income of such individual for the month preceding the month in which he died,
- (E) at the time of filing such application has in her care a child of such individual entitled to a child's insurance benefit, and
- (F) in the case of a surviving divorced mother—

[(i) at the time of such individual's death (or, if such individual had a period of disability which did not end before the month in which he died, at the time such period began or at the time of such death)—

[(I) she was receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary, from such individual, or

[(II) she was receiving substantial contributions from such individual (pursuant to a written agreement), or

[(III) there was a court order for substantial contributions to her support from such individual.]<sup>1</sup>

[(ii) (i) the child referred to in subparagraph (E) is her son, daughter, or legally adopted child, and

[(iii) (ii) the benefits referred to in such subparagraph are payable on the basis of such individual's wages and self-employment income.

shall (subject to subsection (s)) be entitled to a mother's insurance benefit for each month, beginning with the first month after August 1950 in which she becomes so entitled to such insurance benefits and ending with the month preceding the first month in which any of the following occurs: no child of such deceased individual is entitled to a child's insurance benefit, such widow or surviving divorced mother becomes entitled to an old-age insurance benefit equal to or exceeding three-fourths of the primary insurance amount of such deceased individual, she becomes entitled to a widow's insurance benefit, she remarries, or she dies. Entitlement to such benefits shall also end, in the case of a surviving divorced mother, with the month immediately preceding the first month in which no son, daughter, or legally adopted child of such surviving divorced mother is entitled to a child's insurance benefit on the basis of the wages and self-employment income of such deceased individual.

(2) Such mother's insurance benefit for each month shall be equal to three-fourths of the primary insurance amount of such deceased individual.

<sup>1</sup> Applies to benefits for months after December 1971 on the basis of applications filed on or after date of enactment.

(3) In the case of a widow or surviving divorced mother who marries—

(A) an individual entitled to benefits under subsection (a), (f), or (h), or under section 223(a), or

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d),

the entitlement of such widow or surviving divorced mother to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) but subject to subsection (s), not be terminated by reason of such marriage; except that, in the case of such a marriage to an individual entitled to benefits under section 223(a) or subsection (d) of this section, the preceding provisions of this paragraph shall not apply with respect to benefits for months after the last month for which such individual is entitled to such benefits under section 223(a) or subsection (d) of this section unless (i) he ceases to be so entitled by reason of his death, or (ii) in the case of an individual who was entitled to benefits under section 223(a), he is entitled, for the month following such last month, to benefits under subsection (a) of this section.

#### Parent's Insurance Benefits

(h) (1) Every parent (as defined in this subsection) of an individual who died a fully insured individual if such parent—

(A) has attained age 62,

(B) (i) was receiving at least one-half of his support from such individual at the time of such individual's death or, if such individual had a period of disability which did not end prior to the month in which he died, at the time such period began or at the time of such death, and (ii) filed proof of such support within two years after the date of such death, or, if such individual had such a period of disability, within two years after the month in which such individual filed application with respect to such period of disability or two years after the date of such death, as the case may be,

(C) has not married since such individual's death,

(D) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than 82½ percent of the primary insurance amount of such deceased individual if the amount of the parent's insurance benefit for such amount is determinable under paragraph (2)(A) (or 75 percent of such primary insurance amount in any other case), and

(E) has filed application for parent's insurance benefits, shall be entitled to a parent's insurance benefit for each month beginning with the first month after August 1950 in which such parent becomes so entitled to such parent's insurance benefits and ending with the month preceding the first month in which any of the following occurs: such parent dies, marries, or becomes entitled to an old-age insurance benefit equal to or exceeding 82½ percent of the primary insurance amount of such deceased individual if the amount of the parent's insurance benefit for such month is determinable under paragraph (2)(A) (or 75 percent of such primary insurance amount in any other case).

(2)(A) Except as provided in subparagraphs (B) and (C), such parent's insurance benefit for each month shall be equal to 82½ percent of the primary insurance amount of such deceased individual.

(B) For any month for which more than one parent is entitled to parent's insurance benefits on the basis of such deceased individual's wages and self-employment income, such benefit for each such parent for such month shall (except as provided in subparagraph (C)) be equal to 75 percent of the primary insurance amount of such deceased individual.

(C) In any case in which—

(i) any parent is entitled to a parent's insurance benefit for a month on the basis of a deceased individual's wages and self-employment income, and

(ii) another parent of such deceased individual is entitled to a parent's insurance benefit for such month on the basis of such wages and self-employment income, and on the basis of an application filed after such month and after the month in which the application for the parent's benefits referred to in clause (i) was filed,

the amount of the parent's insurance benefit of the parent referred to in clause (i) for the month referred to in such clause shall be determined under subparagraph (A) instead of subparagraph (B) and the amount of the parent's insurance benefit of a parent referred to in clause (ii) for such month shall be equal to 150 percent of the primary insurance amount of the deceased individual minus the amount (before the application of section 203(a)) of the benefit for such month of the parent referred to in clause (i).

(3) As used in this subsection, the term "parent" means the mother or father of an individual, a stepparent of an individual by a marriage contracted before such individual attained the age of sixteen, or an adopting parent by whom an individual was adopted before he attained the age of sixteen.

(4) In the case of a parent who marries—

(A) an individual entitled to benefits under this subsection or subsection (b), (e), (f), or (g), or

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d),

such parent's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) but subject to subsection (s), not be terminated by reason of such marriage; except that, in the case of such a marriage to a male individual entitled to benefits under subsection (d), the preceding provisions of this paragraph shall not apply with respect to benefits for months after the last month for which such individual is entitled to such benefits under subsection (d) unless he ceases to be so entitled by reason of his death.

#### Lump-Sum Death Payments

(i) Upon the death, after August 1950, of an individual who died a fully or currently insured individual, an amount equal to three times such individual's primary insurance amount, or an amount equal to \$255, whichever is the smaller, shall be paid in a lump sum to the person, if any, determined by the Secretary to be the widow or widower of the deceased and to have been living in the same household with the

deceased at the time of death. If there is no such person, or if such person dies before receiving payment, then such amount shall be paid—

(1) if all or part of the burial expenses of such insured individual which are incurred by or through a funeral home or funeral homes remains unpaid, to such funeral home or funeral homes to the extent of such unpaid expenses, but only if (A) any person who assumed the responsibility for the payment of all or any part of such burial expenses files an application, prior to the expiration of two years after the date of death of such insured individual, requesting that such payment be made to such funeral home or funeral homes, or (B) at least 90 days have elapsed after the date of death of such insured individual and prior to the expiration of such 90 days no person has assumed responsibility for the payment of any such burial expenses;

(2) if all of the burial expenses of such insured individual which were incurred by or through a funeral home or funeral homes have been paid (including payments made under clause (1)), to any person or persons, equitably entitled thereto, to the extent and in the proportions that he or they shall have paid such burial expenses; or

(3) if any part of the amount payable under this subsection remains after payments have been made pursuant to clauses (1) and (2), to any person or persons, equitably entitled thereto, to the extent and in the proportions that he or they shall have paid other expenses in connection with the burial of such insured individual, in the following order of priority: (A) expenses of opening and closing the grave of such insured individual, (B) expenses of providing the burial plot of such insured individual, and (C) any remaining expenses in connection with the burial of such insured individual.

No payment (except a payment authorized pursuant to clause (1) (A) of the preceding sentence) shall be made to any person under this subsection unless application therefor shall have been filed, by or on behalf of such person (whether or not legally competent), prior to the expiration of two years after the date of death of such insured individual, or unless such person was entitled to wife's or husband's insurance benefits, on the basis of the wages and self-employment income of such insured individual, for the month preceding the month in which such individual died. In the case of any individual who died outside the forty-eight States and the District of Columbia after December 1953 and before January 1, 1957, whose death occurred while he was in the active military or naval service of the United States, and who is returned to any of such States, the District of Columbia, Alaska, Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa for interment or reinterment, the provisions of the preceding sentence shall not prevent payment to any person under the second sentence of this subsection if application for a lump-sum death payment with respect to such deceased individual is filed by or on behalf of such person (whether or not legally competent) prior to the expiration of two years after the date of such

interment or reinterment. In the case of any individual who died outside the fifty States and the District of Columbia after December 1956 while he was performing service, as a member of a uniformed service, to which the provisions of section 210(1) (1) are applicable, and who is returned to any State or to any Territory or possession of the United States, for interment or reinterment, the provisions of the third sentence of this subsection shall not prevent payment to any person under the second sentence of this subsection if application for a lump-sum death payment with respect to such deceased individual is filed by or on behalf of such person (whether or not legally competent) prior to the expiration of two years after the date of such interment or reinterment.

#### **Application for Monthly Insurance Benefits**

(j)(1) An individual who would have been entitled to a benefit under subsection (a), (b), (c), (d), (e), (f), (g), or (h) for any month after August 1950 had he filed application therefor prior to the end of such month shall be entitled to such benefit for such month if he files application therefor prior to the end of the twelfth month immediately succeeding such month. Any benefit under this title for a month prior to the month in which application is filed shall be reduced, to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such application, the Secretary has certified for payment for such prior month.

(2) An application for any monthly benefits under this section filed before the first month in which the applicant satisfies the requirements for such benefits shall be deemed a valid application only if the applicant satisfies the requirements for such benefits before the Secretary makes a final decision on the application. If upon final decision by the Secretary, or decision upon judicial review thereof, such applicant is found to satisfy such requirements, the application shall be deemed to have been filed in such first month.

(3) Notwithstanding the provisions of paragraph (1), an individual may, at his option, waive entitlement to any benefit referred to in paragraph (1) for any one or more consecutive months (beginning with the earliest month for which such individual would otherwise be entitled to such benefit) which occur before the month in which such individual files application for such benefit; and, in such case, such individual shall not be considered as entitled to such benefits for any such month or months before such individual filed such application. An individual shall be deemed to have waived such entitlement for any such month for which such benefit would, under the second sentence of paragraph (1), be reduced to zero.

#### **Simultaneous Entitlement to Benefits**

(k)(1) A child, entitled to child's insurance benefits on the basis of the wages and self-employment income of an insured individual, who would be entitled, on filing application, to child's insurance benefits on the basis of the wages and self-employment income of some other insured individual, shall be deemed entitled, subject to the provisions of paragraph (2) hereof, to child's insurance benefits on the basis of the wages and self-employment income of such other individual if an application for child's insurance benefits on the basis of the



wages and self-employment income of such other individual has been filed by any other child who would, on filing application, be entitled to child's insurance benefits on the basis of the wages and self-employment income of both such insured individuals.

(2) (A) (i) Any child who under the preceding provisions of this section is entitled for any month to **[more than one]** child's insurance **[benefit]** *benefits on the wages and self-employment income of more than one insured individual shall, notwithstanding such provisions, be entitled to only one of such child's insurance benefits for such month [ , such benefit to be the one based on the wages and and self-employment income of the insured individual who has the greatest primary insurance amount.] Subject to the succeeding provisions of this subparagraph, such child's insurance benefit for such month shall be the largest benefit to which such child could be entitled under subsection (d) (without the application of section 203(a)).*

(ii) *If the largest benefit to which such child could be entitled under subsection (d) is based on the wages and self-employment income of an insured individual other than the insured individual who has the greatest primary insurance amount, but payment of such benefit on the basis of such wages and self-employment income would result in a smaller benefit (after the application of section 203(a)) for such month for any other person entitled to benefits based on such wages and self-employment income, such child's insurance benefit for such month shall (subject to clause (iii)) be the benefit based on the wages and self-employment income of the insured individual who has the greatest primary insurance amount.*

(iii) *If there are two or more insured individuals (other than the insured individual who has the greatest primary insurance amount) on the basis of whose wages and self-employment income such child could be entitled under subsection (d) to a benefit larger than the benefit based on the wages and self-employment income of the insured individual who has the greatest primary insurance amount, such child's insurance benefit for such month shall be the largest benefit to which such child could be entitled under subsection (d) (without the application of section 203(a)) on the basis of the wages and self-employment income of any of them with respect to whom the provisions of clause (ii) are not applicable, and shall not be the benefit based on the wages and self-employment income of the insured individual who has the greatest primary insurance amount as otherwise specified in clause (ii) unless the provisions of such clause are applicable with respect to all of such insured individuals.<sup>1</sup>*

(B) Any individual (other than an individual to whom subsections (e) (4) or (f) (5) applies) who, under the preceding provisions of this section and under the provisions of section 223, is entitled for any month to more than one monthly insurance benefit (other than old-age or disability insurance benefit) under this title shall be entitled to only one such monthly benefit for such month, such benefit to be the largest of the monthly benefits to which he (but for this subparagraph (B)) would otherwise be entitled for such months. Any individual who is entitled for any month to more than one widow's or widower's insurance benefit to which subsection (e) (4) or (f) (5) applies shall be entitled to only one such benefit for such month, such benefit to be the largest of such benefits.

(3) (A) If an individual is entitled to an old-age or disability insurance benefit for any month and to any other monthly insurance benefit for such month, such other insurance benefit for such month, after any reduction under subsection (q), *subsection (e) (2) or (f) (3)*,<sup>1</sup> and any reduction under section 203 (a), shall be reduced, but not below zero, by an amount equal to such old-age or disability insurance benefit (after reduction under such subsection (q)).

(B) If an individual is entitled for any month to a widow's or widower's insurance benefit to which subsection (e) (4) or (f) (5) applies and to any other monthly insurance benefit under section 202 (other than an old-age insurance benefit), such other insurance benefit for such month, after any reduction under subparagraph (A), any reduction under subsection (q), and any reduction under section 203 (a), shall be reduced, but not below zero, by an amount equal to such widow's or widower's insurance benefit after any reduction or reductions under such subparagraph (A) and such section 203(a).

(4) Any individual who, under this section and section 223, is entitled for any month to both an old-age insurance benefit and a disability insurance benefit under this title shall be entitled to only the larger of such benefits for such month, except that, if such individual so elects, he shall instead be entitled to only the smaller of such benefits for such month.

#### Entitlement to Survivor Benefits Under Railroad Retirement Act

(1) If any person would be entitled, upon filing application therefor to an annuity under section 5 of the Railroad Retirement Act of 1937, or to a lump-sum payment under subsection (f) (1) of such section, with respect to the death of an employee (as defined in such Act) no lump-sum death payment, and no monthly benefit for the month in which such employee died or for any month thereafter, shall be paid under this section to any person on the basis of the wages and self-employment income of such employee.

#### Minimum Survivor's [or Dependent's] Benefit

(m) (1) In any case in which [the benefit of any] *an* individual [for any month under this section (other than subsection (a)) is, prior to reduction under subsection (k) (3) and subsection (q), less than the first figure in column IV of the table in section 215(a) and no other individual] *is entitled to a monthly benefit under this section on the basis of the wages and self-employment income of a deceased individual for any month and no other person is* (without the application of section 202(j) (1)) *entitled to a monthly benefit under this section for such month on the basis of [the same] such wages and self-employment income, such individual's benefit amount for such month [shall], prior to reduction under [such] subsection (k) (3) [and subsection (q), be increased to the first figure in column IV of the table in section 215(a).], shall be not less than the first amount appearing in column IV of the table in (or deemed to be in) section 215(a), except as provided in paragraph (2).*

<sup>1</sup> Applies to benefits for months after December 1971.

(2) In the case of any such individual who is entitled to a monthly benefit under subsection (e) or (f), such individual's benefit amount, after reduction under subsection (q) (1), shall be not less than—

(A) \$70.40, if his first month of entitlement to such benefit is the month in which such individual attained age 62 or a subsequent month, or

(B) \$70.40 reduced under subsection (q) (1) as if retirement age as specified in subsection (q) (6) (A) (ii) were age 62 instead of the age specified in subsection (q) (9), if his first month of entitlement to such benefit is before the month in which he attained age 62.

(3) In the case of any individual whose benefit amount was computed (or recomputed) under the provisions of paragraph (2) and such individual was entitled to benefits under subsection (e) or (f) for a month prior to any month after 1971 for which a general benefit increase under this title (as defined in section 215(i)(3)) or a benefit increase under section 215(i) becomes effective, the benefit amount of such individual as computed under paragraph (2) without regard to the reduction specified in subparagraph (B) thereof shall be increased by the percentage increase applicable for such benefit increase, prior to the application of subsection (q) (1) pursuant to paragraph (2) (B) and subsection (q) (4).<sup>1</sup>

#### Termination of Benefits Upon Deportation of Primary Beneficiary

(n) (1) If any individual is (after the date of enactment of this subsection) deported under paragraph (1), (2), (4), (5), (6), (7), (10), (11), (12), (14), (15), (16), (17), or (18) of section 241(a) of the Immigration and Nationality Act, then, notwithstanding any other provisions of this title—

(A) no monthly benefit under this section or section 223 shall be paid to such individual, on the basis of his wages and self-employment income, for any month occurring (i) after the month in which the Secretary is notified by the Attorney General that such individual has been so deported, and (ii) before the month in which such individual is thereafter lawfully admitted to the United States for permanent residence,

(B) if no benefit could be paid to such individual (or if no benefit could be paid to him if he were alive) for any month by reason of subparagraph (A), no monthly benefit under this section shall be paid, on the basis of his wages and self-employment income, for such month to any other person who is not a citizen of the United States and is outside the United States for any part of such month, and

(C) no lump-sum death payment shall be made on the basis of such individual's wages and self-employment income if he dies (i) in or after the month in which such notice is received, and (ii) before the month in which he is thereafter lawfully admitted to the United States for permanent residence.

Section 203 (b), (c), and (d) of this Act shall not apply with respect to any such individual for any month for which no monthly benefit may be paid to him by reason of this paragraph.

<sup>1</sup> Applies to benefits for months after December 1971.

(2) As soon as practicable after the deportation of any individual under any of the paragraphs of section 241(a) of the Immigration and Nationality Act enumerated in paragraph (1) in this subsection, the Attorney General shall notify the Secretary of such deportation.

**Application for Benefits by Survivors of Members and Former Members of the Uniformed Services**

(o) In the case of any individual who would be entitled to benefits under subsection (d), (e), (g), or (h) upon filing proper application therefor, the filing with the Administrator of Veterans' Affairs by or on behalf of such individual of an application for such benefits, on the form described in section 3005 of Title 38, United States Code, shall satisfy the requirement of such subsection (d), (e), (g), or (h) that an application for such benefits be filed.

**Extension of Period for Filing Proof of Support and Applications for Lump-Sum Death Payment**

(p) In any case in which there is a failure—

(1) to file proof of support under subparagraph (C) of subsection (c) (1), clause (i) or (ii) of subparagraph (D) of subsection (f) (1), or subparagraph (B) of subsection (h) (1), or under clause (B) of subsection (f) (1) of this section as in effect prior to the Social Security Act Amendments of 1950, within the period prescribed by such subparagraph or clause, or

(2) to file, in the case of a death after 1946, application for a lump-sum death payment under subsection (i), or under subsection (g) of this section as in effect prior to the Social Security Act Amendments of 1950, within the period prescribed by such subsection,

any such proof or application, as the case may be, which is filed after the expiration of such period shall be deemed to have been filed within such period if it is shown to the satisfaction of the Secretary that there was good cause for failure to file such proof or application within such period. The determination of what constitutes good cause for purposes of this subsection shall be made in accordance with regulations of the Secretary.

**Reduction of Benefit Amounts for Certain Beneficiaries**

(q) (1) If the first month for which an individual is entitled to an old-age, wife's, husband's, widow's, or widower's insurance benefit is a month before the month in which such individual attains retirement age, the amount of such benefit for **[each]** such month and for any subsequent month shall, subject to the succeeding paragraphs of this subsection, be reduced by—

(A)  $\frac{5}{100}$  of 1 percent of such amount if such benefit is an old-age **[, widow's or widower's]** insurance benefit, **[or]**  $\frac{25}{300}$  of 1 percent of such amount if such benefit is a wife's or husband's insurance benefit **[;]**, or  $\frac{19}{40}$  of 1 percent of such amount if such benefit is a widow's or widower's insurance benefit, multiplied by—

(B) (i) the number of months in the reduction period for such benefit (determined under paragraph (6) (A)), if such benefit is

for a month before the month in which such individual attains retirement age, or

(ii) *if less*, the number of *such* months in the adjusted reduction period for such benefit (determined under paragraph (7)), if such benefit is (I) for the month in which such individual attains age 62, or (II) for the month in which such individual attains retirement age [or for any month thereafter.]:

[A widow's or widower's insurance benefit reduced pursuant to the preceding sentence] and in the case of a widow or widower whose first month of entitlement to a widow's or widower's insurance benefit is a month before the month in which such widow or widower attains age 60, such benefit, reduced pursuant to the preceding provisions of this paragraph (and before the application of the second sentence of paragraph (8)), shall be further reduced by—

(C) [43/198] 43/240 of 1 percent of the amount of such benefit, multiplied by—

(D) (i) the number of months in the additional reduction period for such benefit (determined under paragraph (6) (B)), if such benefit is for a month before the month in which such individual attains [retirement] age 62, or

(ii) *if less*, the number of months in the additional adjusted reduction period for such benefit (determined under paragraph (7)), if such benefit is for the month in which such individual attains [retirement] age 62 or [for] any month thereafter.<sup>1</sup>

(2) If an individual is entitled to a disability insurance benefit for a month after a month for which such individual was entitled to an old-age insurance benefit, such disability insurance benefit for each month shall be reduced by the amount such old-age insurance benefit would be reduced under paragraphs (1) and (4) for such month had such individual attained age 65 in the first month for which he most recently became entitled to a disability insurance benefit.

(3) (A) If the first month for which an individual both is entitled to a wife's, husband's, widow's, or widower's insurance benefit and has attained age 62 (in the case of a wife's or husband's insurance benefit), or age 50 (in the case of a widow's or widower's insurance benefit) is a month for which such individual is also entitled to—

(i) an old-age insurance benefit (to which such individual was first entitled for a month before he attains age 65), or

(ii) a disability insurance benefit,

then [in lieu of any reduction under paragraph (1) (but)] (subject to the succeeding paragraphs of this subsection) such wife's, husband's, widow's, or widower's insurance benefit for each month shall be reduced as provided in subparagraph (B), (C), or (D) [.] of this paragraph, in lieu of any reduction under paragraph (1), if the amount of the reduction in such benefit under this paragraph is less than the amount of the reduction in such benefit would be under paragraph (1),<sup>2</sup>

(B) For any month for which such individual is entitled to an old-age insurance benefit and is not entitled to a disability insurance benefit, such individual's wife's or husband's insurance benefit shall be reduced by the sum of—

<sup>1</sup> Changes in this section apply to benefits for months after December 1971.

<sup>2</sup> Applies to benefits for months commencing with the sixth month after the month of enactment.

(i) the amount by which such old-age insurance benefit is reduced under paragraph (1) for such month, and

(ii) the amount by which such wife's or husband's insurance benefit would be reduced under paragraph (1) for such month if it were equal to the excess of such wife's or husband's insurance benefit (before reduction under this subsection) over such old-age insurance benefit (before reduction under this subsection).

(C) For any month for which such individual is entitled to a disability insurance benefit, such individual's wife's, husband's, widow's, or widower's insurance benefit shall be reduced by the sum of—

(i) the amount by which such disability insurance benefit is reduced under paragraph (2) for such month (if such paragraph applied to such benefit), and

(ii) the amount by which such wife's, husband's, widow's, or widower's insurance benefit would be reduced under paragraph (1) for such month if it were equal to the excess of such wife's, husband's, widow's, or widower's insurance benefit (before reduction under this subsection) over such disability insurance benefit (before reduction under this subsection).

(D) For any month for which such individual is entitled neither to an old-age insurance benefit nor to a disability insurance benefit, such individual's wife's, husband's, widow's, or widower's insurance benefit shall be reduced by the amount by which it would be reduced under paragraph (1).

[(E) If the first month for which an individual is entitled to an old-age insurance benefit (whether such first month occurs before, with, or after the month in which such individual attains the age of 65) is a month for which such individual is also (or would, but for subsection (e) (1) in the case of a widow or surviving divorced wife or subsection (f) (1) in the case of a widower, be) entitled to a widow's or widower's insurance benefit to which such individual was first entitled for a month before she or he attained retirement age, then such old-age insurance benefit shall be reduced by whichever of the following is the larger:

[(i) the amount by which (but for this subparagraph) such old-age insurance benefit would have been reduced under paragraph (1), or

[(ii) the amount equal to the sum of the amount by which such widow's or widower's insurance benefit was reduced for the month in which such individual attained retirement age and the amount by which such old-age insurance benefit would be reduced under paragraph (1) if it were equal to the excess of such old-age insurance benefit (before reduction under this subsection) over such widow's or widower's insurance benefit (before reduction under this subsection).]

[(F) If the first month for which an individual is entitled to a disability insurance benefit (when such first month occurs with or after the month in which such individual attains the age of 62) is a month for which such individual is also (or would, but for subsection (e) (1) in the case of a widow or surviving divorced wife or subsection (f) (1) in the case of a widower, be) entitled to a widow's or widower's insurance benefit to which such individual was first entitled for a month before she or he attained retirement age, then such disability insurance

benefit for each month shall be reduced by whichever of the following is larger:

[(i) the amount by which (but for this subparagraph) such disability insurance benefit would have been reduced under paragraph (2), or

[(ii) the amount equal to the sum of the amount by which such widow's or widower's insurance benefit was reduced for the month in which such individual attained retirement age and the amount by which such disability insurance benefit would be reduced under paragraph (2) if it were equal to the excess of such disability insurance benefit (before reduction under this subsection) over such widow's insurance benefit (before reduction under this subsection).]

[(G) If the first month for which an individual is entitled to a disability insurance benefit (when such first month occurs before the month in which such individual attains the age of 62) is a month for which such individual is also (or would, but for subsection (e) (1) in the case of a widow or surviving divorced wife or subsection (f) (1) in the case of a widower, be) entitled to a widow's or widower's insurance benefit, then such disability insurance benefit for each month shall be reduced by the amount such widow's insurance benefit would be reduced under paragraphs (1) and (4) for such month had such individual attained age 62 in the first month for which she or he most recently became entitled to a disability insurance benefit.]<sup>1</sup>

(4) If—

(A) an individual is or was entitled to a benefit subject to reduction under paragraph (1) or (3) of this subsection, and

(B) such benefit is increased by reason of an increase in the primary insurance amount of the individual on whose wages and self-employment income such benefit is based,

then the amount of the reduction of such benefit for each month shall be computed separately (under paragraph (1) or (3), whichever applies) for the portion of such benefit which constitutes such benefit before any increase described in subparagraph (B), and separately (under paragraph (1) or (3), whichever applies to the benefit being increased) for each such increase. For purposes of determining the amount of the reduction under paragraph (1) or (3) in any such increase, the reduction period and the adjusted reduction period shall be determined as if such increase were a separate benefit to which such individual was entitled for and after the first month for which such increase is effective.

(5) (A) No wife's insurance benefit shall be reduced under this subsection—

(i) for any month before the first month for which there is in effect a certificate filed by her with the Secretary, in accordance with regulations prescribed by him, in which she elects to receive wife's insurance benefits reduced as provided in this subsection, or

(ii) for any month in which she has in her care (individually or jointly with the person on whose wages and self-employment income her wife's insurance benefit is based) a child of such person entitled to child's insurance benefits.

<sup>1</sup> Applies to benefits for months commencing with the sixth month after the month of enactment.

(B) Any certificate described in subparagraph (A) (i) shall be effective for purposes of this subsection (and for purposes of preventing deductions under section 203(c)(2))—

(i) for the month in which it is filed and for any month thereafter, and

(ii) for months, in the period designated by the woman filing such certificate, of one or more consecutive months (not exceeding 12) immediately preceding the month in which such certificate is filed;

except that such certificate shall not be effective for any month before the month in which she attains age 62, nor shall it be effective for any month to which subparagraph (A) (ii) applies.

(C) If a woman does not have in her care a child described in subparagraph (A) (ii) in the first month for which she is entitled to a wife's insurance benefit, and if such first month is a month before the month in which she attains age 65, she shall be deemed to have filed in such first month the certificate described in subparagraph (A) (i).

(D) No widow's insurance benefit for a month in which she has in her care a child of her deceased husband (or deceased former husband) entitled to child's insurance benefits shall be reduced under this subsection below the amount to which she would have been entitled had she been entitled for such month to mother's insurance benefits on the basis of her deceased husband's (or deceased former husband's) wages and self-employment income.

(6) For the purposes of this subsection—

(A) the "reduction period" for an individual's old-age, wife's, husband's, widow's, or widower's insurance benefit is the period—

(i) beginning—

(I) in the case of an old-age or husband's insurance benefit, with the first day of the first month for which such individual is entitled to such benefit, or

(II) in the case of a wife's insurance benefit, with the first day of the first month for which a certificate described in paragraph (b) (A) (i) is effective, or

(III) in the case of a widow's or widower's insurance benefit, with the first day of the first month for which such individual is entitled to such benefit or the first day of the month in which such individual attains age 60, whichever is the later, and

(ii) ending with the last day of the month before the month in which such individual attains retirement age; and

(B) the "additional reduction period" for an individual's widow's or widower's insurance benefit is the period—

(i) beginning with the first day of the first month for which such individual is entitled to such benefit, but only if such individual has not attained age 60 in such first month, and

(ii) ending with the last day of the month before the month in which such individual attains age 60.

(7) For purposes of this subsection, the "adjusted reduction period" [or "additional adjusted reduction period"] for an individual's old-age, wife's, husband's, widow's, or widower's insurance benefit is the reduction period [or additional reduction period (as the case may be)] prescribed in paragraph (6)(A) for such benefit, and the



*“additional adjusted reduction period” for an individual’s, widow’s, or widower’s insurance benefit is the additional reduction period prescribed by paragraph (6)(B) for such benefit,<sup>1</sup> excluding from each such period—*

(A) any month in which such benefit was subject to deductions under section 203(b), 203(c)(1), 203(d)(1), or 222(b),

(B) in the case of wife’s insurance benefits, any month in which she had in her care (individually or jointly with the person on whose wages and self-employment income such benefit is based) a child of such person entitled to child’s insurance benefits,

(C) in the case of wife’s or husband’s insurance benefits, any month for which such individual was not entitled to such benefits because the spouse on whose wages and self-employment income such benefits were based ceased to be under a disability,

(D) in the case of widow’s insurance benefits, any month in which the reduction in the amount of such benefit was determined under paragraph (5)(D),

(E) in the case of widow’s or widower’s insurance benefits, any month before the month in which she or he attained [retirement age] age 62, and also for any later month before the month in which he attained retirement age,<sup>1</sup> for which she or he was not entitled to such benefit because of occurrence of an event that terminated her or his entitlement to such benefits, and

(F) in the case of old-age insurance benefits, any month for which such individual was entitled to a disability insurance benefit.

(8) This subsection shall be applied after reduction under section 203(a) and after application of section 215(g). If the amount of any reduction computed under paragraph (1), (2), or (3) is not a multiple of \$0.10, it shall be reduced to the next lower multiple of \$0.10.

(9) For purposes of this subsection, the term “retirement age” means age 65 [with respect to an old-age, wife’s, or husband’s insurance benefit and age 62 with respect to a widow’s or widower’s insurance benefit].<sup>1</sup>

#### **Presumed Filing of Application by Individuals Eligible for Old-Age Insurance Benefits and for Wife’s or Husband’s Insurance Benefits**

(r) [(1) If the first month for which an individual is entitled to an old-age insurance benefit is a month before the month in which such individual attains age 65, and if such individual is eligible for a wife’s or husband’s insurance benefit for such first month, such individual shall be deemed to have filed an application in such month for wife’s or husband’s insurance benefits.

(2) If the first month for which an individual is entitled to a wife’s or husband’s insurance benefit reduced under subsection (q) is a month before the month in which such individual attains age 65, and if such individual is eligible (but for section 202(k)(4)) for an old-age insurance benefit for such first month, such individual shall be deemed to have filed an application for old-age insurance benefits—

(A) in such month, or

<sup>1</sup> Applies to benefits for months after December 1971.

(B) if such individual is also entitled to a disability insurance benefit for such month, in the first subsequent month for which such individual is not entitled to a disability insurance benefit.

(3) For purposes of this subsection, an individual shall be deemed eligible for a benefit for a month if, upon filing application therefor in such month, he would be entitled to such benefit for such month.】

(Repealed.)<sup>1</sup>

#### Child Aged 18 or Over Attending School

(s) (1) For the purposes of subsections (b) (1), (g) (1), (q) (5), and (q) (7) of this section and paragraphs (2), (3), and (4) of section 203(c), a child who is entitled to child's insurance benefits under subsection (d) for any month, and who has attained the age of 18 but is not in such month under a disability (as defined in section 223(d)) 【which began before he attained such age,】<sup>2</sup> shall be deemed not entitled to such benefits for such month, unless he was under such a disability in the third month before such month.

(2) Subsection (f) (4), and so much of subsections (b) (3), (d) (5), (e) (3), (g) (3), and (h) (4), of this section as precedes the semicolon, shall not apply in the case of any child unless such child, at the time of the marriage referred to therein, was under a disability (as defined in section 223(d)) 【which began before such child attained the age of 18】<sup>2</sup> or had been under such a disability in the third month before the month in which such marriage occurred.

(3) Subsections (c) (2) (B) and (f) (2) (B) of this section, so much of subsections (b) (3), (d) (5), (e) (3), (g) (3), and (h) (4) of this section as follows the semicolon, the last sentence of subsection (c) of section 203, subsection (f) (1) (C) of section 203, and subsections (b) (3) (B), (c) (6) (B), (f) (3) (B), and (g) (6) (B) of section 216 shall not apply in the case of any child with respect to any month referred to therein unless in such month or the third month prior thereto such child was under a disability (as defined in section 223(d)) 【which began before such child attained the age of 18】.<sup>2</sup>

#### Suspension of Benefits of Aliens Who Are Outside the United States

(t) (1) Notwithstanding any other provision of this title, no monthly benefits shall be paid under this section or under section 223 to any individual who is not a citizen or national of the United States for any month which is—

(A) after the sixth consecutive calendar month during all of which the Secretary finds, on the basis of information furnished to him by the Attorney General or information which otherwise comes to his attention, that such individual is outside the United States, and

(B) prior to the first month thereafter for all of which such individual has been in the United States.

For purposes of the preceding sentence, after an individual has been outside the United States for any period of thirty consecutive days he shall be treated as remaining outside the United States until he has been in the United States for a period of thirty consecutive days.

<sup>1</sup> Applies with respect to benefits payable pursuant to applications filed on or after the date of enactment.

<sup>2</sup> Applies to benefits payable under section 202 for months after December 1971, except that in the case of an individual not entitled to a benefit for December 1971, benefits will be payable only on the basis of an application filed after Sept. 30, 1971.

(2) Paragraph (1) shall not apply to any individual who is a citizen of a foreign country which the Secretary finds has in effect a social insurance or pension system which is of general application in such country and under which—

(A) periodic benefits, or the actuarial equivalent thereof, are paid on account of old-age, retirement, or death, and

(B) individuals who are citizens of the United States but not citizens of such foreign country and who qualify for such benefits are permitted to receive such benefits or the actuarial equivalent thereof while outside such foreign country without regard to the duration of the absence.

(3) Paragraph (1) shall not apply in any case where its application would be contrary to any treaty obligation of the United States in effect on the date of the enactment of this subsection.

(4) Paragraph (1) shall not apply to any benefit for any month if—

(A) not less than forty of the quarters elapsing before such month are quarters of coverage for the individual on whose wages and self-employment income such benefit is based, or

(B) the individual on whose wages and self-employment income such benefit is based has, before such month, resided in the United States for a period or periods aggregating ten years or more, or

(C) the individual entitled to such benefit is outside the United States while in the active military or naval service of the United States, or

(D) the individual on whose wages and self-employment income such benefit is based died, before such month, either (i) while on active duty or inactive duty training (as those terms are defined in section 210(1) (2) and (3)) as a member of a uniformed service (as defined in section 210(m)), or (ii) as the result of a disease or injury which the Administrator of Veterans' Affairs determines was incurred or aggravated in line of duty while on active duty (as defined in section 210(1) (2)), or an injury which he determines was incurred or aggravated in line of duty while on inactive duty training (as defined in section 210(1) (3)), as a member of a uniformed service (as defined in section 210(m)), if the Administrator determines that such individual was discharged or released from the period of such active duty or inactive duty training under conditions other than dishonorable, and if the Administrator certifies to the Secretary his determinations with respect to such individual under this clause, or

(E) the individual on whose employment such benefit is based had been in service covered by the Railroad Retirement Act which was treated as employment covered by this Act pursuant to the provisions of section 5(k) (1) of the Railroad Retirement Act; except that subparagraphs (A) and (B) of this paragraph shall not apply in the case of any individual who is a citizen of a foreign country that has in effect a social insurance or pension system which is of general application in such country and which satisfies subparagraph (A) but not subparagraph (B) of paragraph (2), or who is a citizen of a foreign country that has no social insurance or pension system of general application if at any time within five years prior

to the month in which the Social Security Amendments of 1967 are enacted (or the first month thereafter for which his benefits are subject to suspension under paragraph (1)) payments to individuals residing in such country were withheld by the Treasury Department under the first section of the Act of October 9, 1940 (31 U.S.C. 123).

(5) No person who is, or upon application would be, entitled to a monthly benefit under this section for December 1956 shall be deprived, by reason of paragraph (1), of such benefit or any other benefit based on the wages and self-employment income of the individual on whose wages and self-employment income such monthly benefit for December 1956 is based.

(6) If an individual is outside the United States when he dies and no benefit may, by reason of paragraph (1) or (10) be paid to him for the month preceding the month in which he dies, no lump-sum death payment may be made on the basis of such individual's wages and self-employment income.

(7) Subsections (b), (c), and (d) of section 203 shall not apply with respect to any individual for any month for which no monthly benefit may be paid to him by reason of paragraph (1) of this subsection.

(8) The Attorney General shall certify to the Secretary such information regarding aliens who depart from the United States to any foreign country (other than a foreign country which is territorially contiguous to the continental United States) as may be necessary to enable the Secretary to carry out the purposes of this subsection and shall otherwise aid, assist, and cooperate with the Secretary in obtaining such other information as may be necessary to enable the Secretary to carry out the purposes of this subsection.

(9) No payments shall be made under part A of title XVIII with respect to items or services furnished to an individual in any month for which the prohibition in paragraph (1) against payment of benefits to him is applicable (or would be if he were entitled to any such benefits).

(10) Notwithstanding any other provision of this title, no monthly benefits shall be paid under this section or under section 223, for any month beginning after June 30, 1968, to an individual who is not a citizen or national of the United States and who resides during such month in a foreign country if payments for such month to individuals residing in such country are withheld by the Treasury Department under the first section of the Act of October 9, 1940 (31 U.S.C. 123).

**Effect of Conviction of Subversive Activities, etc.**

(u)(1) If any individual is convicted of any offense (committed after the date of the enactment of this subsection) under—

(A) chapter 37 (relating to espionage and censorship), chapter 105 (relating to sabotage), or chapter 115 (relating to treason, sedition, and subversive activities) of title 18 of the United States Code, or

(B) section 4, 112, or 113 of the Internal Security Act of 1950, as amended,

then the court may, in addition to all other penalties provided by law, impose a penalty that in determining whether any monthly insurance

benefit under this section or section 223 is payable to such individual for the month in which he is convicted or for any month thereafter, in determining the amount of any such benefit payable to such individual for any such month, and in determining whether such individual is entitled to insurance benefits under part A of title XVIII for any such month, there shall not be taken into account—

(C) any wages paid to such individual or to any other individual in the calendar quarter in which such conviction occurs or in any prior calendar quarter, and

(D) any net earnings from self-employment derived by such individual or by any other individual during a taxable year in which such conviction occurs or during any prior taxable year.

(2) As soon as practicable after an additional penalty has, pursuant to paragraph (1), been imposed with respect to any individual, the Attorney General shall notify the Secretary of such imposition.

(3) If any individual with respect to whom an additional penalty has been imposed pursuant to paragraph (1) is granted a pardon of the offense by the President of the United States, such additional penalty shall not apply for any month beginning after the date on which such pardon is granted.

#### Waiver of Benefits

(v) Notwithstanding any other provisions of this title, in the case of any individual who files a waiver pursuant to section 1402(h) of the Internal Revenue Code of 1954 and is granted a tax exemption thereunder, no benefits or other payments shall be payable under this title to him, no payments shall be made on his behalf under part A of title XVIII, and no benefits or other payments under this title shall be payable on the basis of his wages and self-employment income to any other person, after the filing of such waiver; except that, if thereafter such individual's tax exemption under such section 1402(h) ceases to be effective, such waiver shall cease to be applicable in the case of benefits and other payments under this title and part A of title XVIII to the extent based on his self-employment income for and after the first taxable year for which such tax exemption ceases to be effective and on his wages for and after the calendar year (if any) which begins in or with the beginning of such taxable year.

#### *Increase in Old-Age Insurance Benefit Amounts on Account of Delayed Retirement<sup>1</sup>*

(w) (1) *If the first month for which an old-age insurance benefit becomes payable to an individual is not earlier than the month in which such individual attains age 65 (or his benefit payable at such age is not reduced under subsection (q)), the amount of the old-age insurance benefit (other than a benefit based on a primary insurance amount determined under section 215(a)(3)) which is payable without regard to this subsection to such individual shall be increased by—*

(A)  $\frac{1}{12}$  of 1 percent of such amount, multiplied by

(B) the number (if any) of the increment months for such individual.

<sup>1</sup> Applies to benefits for months after 1971.

(2) For purposes of this subsection, the number of increment months for any individual shall be a number equal to the total number of the months—

(A) which have elapsed after the month before the month in which such individual attained age 65 or (if later) December 1970 and prior to the month in which such individual attained age 72, and

(B) with respect to which—

(i) such individual was a fully insured individual (as defined in section 214(a)), and

(ii) such individual either was not entitled to an old-age insurance benefit or suffered deductions under section 203(b) or 203(c) in amounts equal to the amount of such benefit.

(3) For purposes of applying the provisions of paragraph (1), a determination shall be made under paragraph (2) for each year beginning with 1971, of the total number of an individual's increment months through the year for which the determination is made and the total so determined shall be applicable to such individual's old-age insurance benefits beginning with benefits for January of the year, following the year for which such determination is made; except that the total number applicable in the case of an individual who attains age 72 after 1971 shall be determined through the month before the month in which he attains such age and shall be applicable to his old-age insurance benefit beginning with the month in which he attains such age.

(4) This subsection shall be applied after reduction under section 203(a), and, in the case of a husband and wife whose benefits are determined under section 203(a)(3), shall be applied separately to the benefit of each as so determined.<sup>1</sup>

## Reduction of Insurance Benefits

### Maximum Benefits

Sec. 203. (a) Whenever the total of monthly benefits to which individuals are entitled under sections 202 and 223 for a month on the basis of the wages and self-employment income of an insured individual is greater than the amount appearing on column V of the table in (or deemed to be in)<sup>2</sup> section 215(a) on the line on which appears in column IV such insured individual's primary insurance amount, such total of benefits shall be reduced to such amount; except that—

(1) when any of such individuals so entitled would (but for the provisions of section 202(k)(2)(A)) be entitled to child's insurance benefits on the basis of the wages and self-employment income of one or more other insured individuals, such total of benefits shall not be reduced to less than the smaller of: (A) the sum of the maximum amounts of benefits payable on the basis of the wages and self-employment income of all such insured individuals, or (B) the last figure in column V of the table appearing in section 215(a), or

(2) when two or more persons were entitled (without the application of section 202(j)(1) and section 223(b)) to monthly

<sup>1</sup> Applies to benefits for months after 1971.

<sup>2</sup> Effective Jan. 1, 1973.

benefits under section 202 or 223 for **[January 1971]** *May 1972* on the basis of the wages and self-employment income of such insured individual and **[at least one such person was so entitled for December 1970]** *the provisions of this subsection were applicable in January 1971 or any prior month in determining the total of the benefits for persons entitled for any such month* on the basis of such wages and self-employment income, such total of benefits for **[January 1971]** *June 1972* or any subsequent month shall not be reduced to less than the larger of—

(A) the amount determined under this subsection without regard to this paragraph, or

(B) an amount **[equal to the sum of the amounts]** derived by multiplying the *sum of the benefit amounts* determined under this title for *May 1972* (including this subsection, but without the application of section 222(b), section 202(q), and subsections (b), (c), and (d) of this section), **[as in effect prior to the amendment of this subsection in March 1971, for each such person for such month by 110]** *by 105 percent* and raising each such increased amount, if it is not a multiple of \$0.10, to the next higher multiple of \$0.10;

but in any such case (i) paragraph (1) of this subsection shall not be applied to such total of benefits after the application of subparagraph (B), and (ii) if section 202(k) (2) (A) was applicable in the case of any such benefits for **[January 1971]** *June 1972*, and ceases to apply after such month, the provisions of subparagraph (B) shall be applied, for and after the month in which section 202(k) (2) (A) ceases to apply, as though paragraph (1) had not been applicable to such total of benefits for **[January 1971]** *June 1972*, or<sup>1</sup>

(2)<sup>2</sup> *when two or more persons were entitled (without the application of section 202(j) (1) and section 223(b)) to monthly benefits under section 202 or 223 for January 1971 or any prior month on the basis of the wages and self-employment income of such insured individual and the provisions of this subsection as in effect for any such month were applicable in determining the benefit amount of any persons on the basis of such wages and self-employment income, the total of benefits for any month after January 1971 shall not be reduced to less than the largest of—*

(A) *the amount determined under this subsection without regard to this paragraph,*

(B) *the largest amount which has been determined for any month under this subsection for persons entitled to monthly benefits on the basis of such insured individual's wages and self-employment income, or*

(C) *if any persons are entitled to benefits on the basis of such wages and self-employment income for the month before the effective month (after June 1972) of a general benefit increase under this title (as defined in section 215(i) (3)) or a benefit increase under the provisions of section 215(i), an amount equal to the sum of such benefits for the month before*

<sup>1</sup> Applies to benefits for months after May 1972 and to lump-sum death payments for deaths after May 1972 and until effective month of next benefit increase. Paragraph amended effective January 1, 1973.

<sup>2</sup> Applies for benefit increases occurring after June 1972.

*such effective month increased by a percentage equal to the percentage of the increase provided under such benefit increase (with any such increased amount which is not a multiple of \$0.10 being rounded to the next higher multiple of \$0.10);*

*but in any such case (i) paragraph (1) of this subsection shall not be applied to such total of benefits after the application of subparagraph (B) or (C), and (ii) if section 202(k)(2)(A) was applicable in the case of any such benefits for a month, and ceases to apply for a month after such month, the provisions of subparagraph (B) or (C) shall be applied, for and after the month in which section 202(k)(2)(A) ceases to apply, as though paragraph (1) had not been applicable to such total of benefits for the last month for which subparagraph (B) or (C) was applicable;<sup>1</sup>*

(3) when any of such individuals is entitled to monthly benefits as a divorced wife under section 202(b) or as a surviving divorced wife under section 202(e) for any month, the benefit to which she is entitled on the basis of the wages and self-employment income of such insured individual for such month shall be determined without regard to this subsection, and the benefits of all other individuals who are entitled for such month to monthly benefits under section 202 on the wages and self-employment income of such insured individual shall be determined as if no such divorced wife or surviving divorced wife were entitled to benefits for such month. In any case in which benefits are reduced pursuant to the preceding provisions of this subsection, such reduction shall be made after any deductions under this section and after any deductions under section 222(b). Whenever a reduction is made under this subsection in the total of monthly benefits to which individuals are entitled for any month on the basis of the wages and self-employment income of an insured individual, each such benefit other than the old-age or disability insurance benefit shall be proportionately decreased; except that if such total of benefits for such month includes any benefit or benefits under section 202(d) which are payable solely by reason of section 216(h)(3), the reduction shall be first applied to reduce (proportionately where there is more than one benefit so payable) the benefits so payable (but not below zero).

(4) *whenever the monthly benefits of such individuals are based on an insured individual's primary insurance amount which is determined under section 215(a)(3) and such primary insurance amount does not appear in column IV of the table in (or deemed to be in) section 215(a), the applicable maximum amount in column V of such table shall be the amount in such column that appears on the line on which the next higher primary insurance amount appears in column IV, or, if larger, the largest amount determined for such persons under this subsection for any month prior to February 1971;<sup>2</sup>*

(5) *in applying this subsection in any case where the primary insurance amount of the insured individual was determined under*

<sup>1</sup> Effective Jan. 1, 1978.

<sup>2</sup> Applies to benefits for months after December 1971 and to lump-sum death payments for deaths after December 1971.



*section 202(a)(3) and his entitlement under such section has not terminated, the total of monthly benefits to which persons other than such individual may be entitled on the basis of such individual's wages and self-employment income shall be determined as though such individual's primary insurance amount had instead been determined under section 215(a) and without regard to section 202(a)(3), or<sup>1</sup>*

*(6) notwithstanding any other provision of law, when—*

*(A) two or more persons are entitled to monthly benefits for a particular month on the basis of the wages and self-employment income of an insured individual and (for such particular month) the provisions of this subsection and section 202(g) are applicable to such monthly benefits, and*

*(B) such individual's primary insurance amount is increased for the following month under any provision of this title,*

*then the total of monthly benefits for all persons on the basis of such wages and self-employment income for such particular month, as determined under the provisions of this subsection, shall for purposes of determining the total of monthly benefits for all persons on the basis of such wages and self-employment income for months subsequent to such particular month be considered to have been increased by the smallest amount that would have been required in order to assure that the total of monthly benefits payable on the basis of such wages and self-employment income for any such subsequent month will not be less (after application of the other provisions of this subsection and section 202(g)) than the total of monthly benefits (after the application of the other provisions of this subsection and section 202(g)) payable on the basis of such wages and self-employment income for such particular month.*

#### **Deductions on Account of Work**

(b) Deductions, in amounts and at such time or times as the Secretary shall determine, shall be made from any payment or payments under this title to which an individual is entitled, and from any payment or payments to which any other persons are entitled on the basis of such individual's wages and self-employment income, until the total of such deductions equals—

(1) such individual's benefit or benefits under section 202 for any month, and

(2) if such individual was entitled to old-age insurance benefits under section 202(a) for such month, the benefit or benefits of all other persons for such month under section 202 based on such individual's wages and self-employment income,

if for such month he is charged with excess earnings, under the provisions of subsection (f) of this section, equal to the total of benefits referred to in clauses (1) and (2). If the excess earnings so charged are less than such total benefits, such deductions with respect to such month shall be equal only to the amount of such excess earnings. If a child who has attained the age of 18 and is entitled to child's insurance benefits, or a person who is entitled to mother's insurance benefits, is married to an individual entitled to old-age insurance benefits

<sup>1</sup> Applies to monthly benefits for months after December 1971.

under section 202(a), such child or such person; as the case may be, shall, for the purposes of this subsection and subsection (f), be deemed to be entitled to such benefits on the basis of the wages and self-employment income of such individual entitled to old-age insurance benefits. If a deduction has already been made under this subsection with respect to a person's benefit or benefits under section 202 for a month, he shall be deemed entitled to payments under such section for such month for purposes of further deductions under this subsection, and for purposes of charging of each person's excess earnings under subsection (f), only to the extent of the total of his benefits remaining after such earlier deductions have been made. For purposes of this subsection and subsection (f)—

(A) an individual shall be deemed to be entitled to payments under section 202 equal to the amount of the benefit or benefits to which he is entitled under such section after the application of subsection (a) of this section, but without the application of the penultimate sentence thereof; and

(B) if a deduction is made with respect to an individual's benefit or benefits under section 202 because of the occurrence in any month of an event specified in subsection (c) or (d) of this section or in section 222(b), such individual shall not be considered to be entitled to any benefits under such section 202 for such month.

**Deductions on Account of Noncovered Work Outside the United States or Failure To Have Child in Care**

(c) Deductions, in such amounts and at such time or times as the Secretary shall determine, shall be made from any payment or payments under this title to which an individual is entitled, until the total of such deductions equals such individual's benefits or benefit under section 202 for any month—

(1) in which such individual is under the age of seventy-two and on seven or more different calendar days of which he engaged in noncovered remunerative activity outside the United States; or

(2) in which such individual, if a wife under age sixty-five entitled to a wife's insurance benefits, did not have in her care (individually or jointly with her husband) a child of her husband entitled to a child's insurance benefit and such wife's insurance benefit for such month was not reduced under the provisions of section 202(q); or

(3) in which such individual, if a widow entitled to a mother's insurance benefit, did not have in her care a child of her deceased husband entitled to a child's insurance benefit; or

(4) in which such individual, if a surviving divorced mother entitled to a mother's insurance benefit, did not have in her care a child of her deceased former husband who (A) is her son, daughter, or legally adopted child and (B) is entitled to a child's insurance benefit on the basis of the wages and self-employment income of her deceased former husband.

For purposes of paragraphs (2), (3), and (4) of this subsection, a child shall not be considered to be entitled to a child's insurance benefit for any month in which paragraph (1) of section 202(s) applies or an event specified in section 222(b) occurs with respect to such child.

Subject to paragraph (3) of such section 202(s), no deductions shall be made under this subsection from any child's insurance benefit for the month in which the child entitled to such benefit attained the age of eighteen or any subsequent month; nor shall any deduction be made under this subsection from any widow's insurance benefits for any month in which the widow or surviving divorced wife is entitled and has not attained age [62] 65<sup>1</sup> (but only if she became so entitled prior to attaining age 60), or from any widower's insurance benefit for any month in which the widower is entitled and has not attained age [62.] 65<sup>1</sup> (but only if he became so entitled prior to attaining age 60).<sup>2</sup>

**Deductions From Dependents' Benefits on Account of Noncovered Work Outside the United States by Old-Age Insurance Beneficiary**

(d)(1) Deductions shall be made from any wife's, husband's, or child's insurance benefit, based on the wages and self-employment income of an individual entitled to old-age insurance benefits, to which a wife, divorced wife, husband, or child is entitled, until the total of such deductions equals such wife's, husband's, or child's insurance benefit or benefits under section 202 for any month in which such individual is under the age of seventy-two and on seven or more different calendar days of which he engaged in noncovered remunerative activity outside the United States.

(2) Deductions shall be made from any child's insurance benefit to which a child who has attained the age of eighteen is entitled, or from any mother's insurance benefit to which a person is entitled, until the total of such deductions equals such child's insurance benefit or benefits or mother's insurance benefit or benefits under section 202 for any month in which such child or person entitled to mother's insurance benefits is married to an individual who is entitled to old-age insurance benefits and on seven or more different calendar days of which such individual engaged in noncovered remunerative activity outside the United States.

**Occurrence of More Than One Event**

(e) If more than one of the events specified in subsections (c) and (d) and section 222(b) occurs in any one month which would occasion deductions equal to a benefit for such month, only an amount equal to such benefit shall be deducted.

**Months to Which Earnings Are Charged**

(f) For purposes of subsection (b)—

(1) The amount of an individual's excess earnings (as defined in paragraph (3)) shall be charged to months as follows: There shall be charged to the first month of such taxable year an amount of his excess earnings equal to the sum of the payments to which he and all other persons are entitled for such month under section 202 on the basis of his wages and self-employment income (or the total of his excess earnings if such excess earnings are less than such sum), and the balance, if any, of such excess earnings shall be charged to each succeeding month in such year to the

<sup>1</sup> Applies to benefits for months after December 1971.

<sup>2</sup> Applies to benefits payable under section 202 for months after December 1971, except that in the case of an individual not entitled to a benefit for December 1971, benefits will be payable only on the basis of an application filed in or after the month of enactment.

extent, in the case of each such month, of the sum of the payments to which such individual and all other persons are entitled for such month under section 202 on the basis of his wages and self-employment income, until the total of such excess has been so charged. Where an individual is entitled to benefits under section 202(a) and other persons are entitled to benefits under section 202(b), (c), or (d) on the basis of the wages and self-employment income of such individual, the excess earnings of such individual for any taxable year shall be charged in accordance with the provisions of this subsection before the excess earnings of such persons for a taxable year are charged to months in such individual's taxable year. Notwithstanding the preceding provisions of this paragraph, but subject to section 202(s), no part of the excess earnings of an individual shall be charged to any month (A) for which such individual was not entitled to a benefit under this title, (B) in which such individual was age seventy-two or over, (C) in which such individual, if a child entitled to child's insurance benefits, has attained the age of 18; (D) for which such individual is entitled to widow's insurance benefits and has not attained age **[62]** 65 (but only if she became so entitled prior to attaining age 60) or widower's insurance benefits and has not attained age **[62]** 65<sup>1</sup> (but only if he became so entitled prior to attaining age 60),<sup>2</sup> or (E) in which such individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5) of this subsection) of more than **[\$140]** \$166.66 $\frac{2}{3}$  or the exempt amount as determined under paragraph (8).<sup>3</sup>

(2) As used in paragraph (1), the term "first month of such taxable year" means the earliest month in such year to which the charging of excess earnings described in such paragraph is not prohibited by the application of clauses (A), (B), (C), (D), and (E) thereof.

(3) For purposes of paragraph (1) and subsection (h), an individual's excess earnings for a taxable year shall be 50 per centum of his earnings for such year in excess of the product of **[of the first \$1,200 of such excess (or all of such excess if it is less than \$1,200, an amount equal to one-half thereof shall not be included.)]**, **[\$140]** \$166.66 $\frac{2}{3}$  or the exempt amount as determined under paragraph (8), multiplied by the number of months in such year, except that in determining an individual's excess earnings for the taxable year in which he attains age 72, there shall be excluded any earnings of such individual for the month in which he attains such age and any subsequent month (with any net earnings or net loss from self-employment in such year being prorated in an equitable manner under regulations of the Secretary). The excess earnings as derived under the preceding sentence, if not a multiple of \$1, shall be reduced to the next lower multiple of \$1.<sup>3</sup>

(4) For purposes of clause (E) of paragraph (1) —

(A) An individual will be presumed, with respect to any month, to have been engaged in self-employment in such

<sup>1</sup> Applies to benefits for months after December 1971.

<sup>2</sup> Applies to benefits payable under section 202 for months after December 1971, except that in the case of an individual not entitled to a benefit for December 1971, benefits will be payable only on the basis of an application filed in or after the month of enactment.

<sup>3</sup> Applies with respect to taxable years ending after December 1971.

month until it is shown to the satisfaction of the Secretary that such individual rendered no substantial services in such month with respect to any trade or business the net income or loss of which is includible in computing (as provided in paragraph (5) of this subsection) his net earnings or net loss from self-employment for any taxable year. The Secretary shall by regulations prescribe the methods and criteria for determining whether or not an individual has rendered substantial services with respect to any trade or business.

(B) An individual will be presumed, with respect to any month, to have rendered services for wages (determined as provided in paragraph (5) of this subsection) of more than **[\$140]** *\$166.66 $\frac{2}{3}$  or the exempt amount as determined under paragraph (8)*<sup>1</sup> until it is shown to the satisfaction of the Secretary that such individual did not render such services in such month for more than such amount.

(5) (A) An individual's earnings for a taxable year shall be (i) the sum of his wages for services rendered in such year and his net earnings for self-employment for such year, minus (ii) any net loss from self-employment for such year.

(B) For purposes of this section—

(i) an individual's net earnings from self-employment for any taxable year shall be determined as provided in section 211, except that paragraphs (1), (4), and (5) of section 211 (c) shall not apply and the gross income shall be computed by excluding the amounts provided by subparagraph (D), and

(ii) an individual's net loss from self-employment for any taxable year is the excess of the deductions (plus his distributive share of loss described in section 702(a)(9) of the Internal Revenue Code of 1954) taken into account under clause (i) over the gross income (plus his distributive share of income so described) taken into account under clause (i).

(C) For purposes of this subsection, an individual's wages shall be computed without regard to the limitations as to amounts of remuneration specified in subsections (a), (g)(2), (g)(3), (h)(2), and (j) of section 209; and in making such computation services which do not constitute employment as defined in section 210, performed within the United States by the individual as an employee or performed outside the United States in the active military or naval service of the United States, shall be deemed to be employment as so defined if the remuneration for such services is not includible in computing his net earnings or net loss from self-employment.

(D) In the case of an individual—

(i) who has attained the age of 65 on or before the last day of the taxable year, and

(ii) who shows to the satisfaction of the Secretary that he is receiving royalties attributable to a copyright or patent obtained before the taxable year in which he attained the age of 65 and that the property to which the copyright or patent relates was created by his own personal efforts,

there shall be excluded from gross income any such royalties.

<sup>1</sup> Applies with respect to taxable years ending after December 31, 1971.

(6) For purposes of this subsection, wages (determined as provided in paragraph (5)(C) which, according to reports received by the Secretary, are paid to an individual during a taxable year shall be presumed to have been paid to him for services performed in such year until it is shown to the satisfaction of the Secretary that they were paid for services performed in another taxable year. If such reports with respect to an individual show his wages for a calendar year, such individual's taxable year shall be presumed to be a calendar year for purposes of this subsection until it is shown to the satisfaction of the Secretary that his taxable year is not a calendar year.

(7) Where an individual's excess earnings are charged to a month and the excess earnings so charged are less than the total of the payments (without regard to such charging) to which all persons are entitled under section 202 for such month on the basis of his wages and self-employment income, the difference between such total and the excess so charged to such month shall be paid (if it is otherwise payable under this title) to such individual and other persons in the proportion that the benefit to which each of them is entitled (without regard to such charging, without the application of section 202(k)(3), and prior to the application of section 203(a)) bears to the total of the benefits to which all of them are entitled.

(8) (A) *Whenever the Secretary pursuant to section 215(i) increases benefits effective with the first month of the calendar year following a cost-of-living computation quarter, he shall also determine and publish in the Federal Register on or before November 1 of the calendar year in which such quarter occurs (along with the publication of such benefit increase as required by section 215(i)(2)(D)) a new exempt amount which shall be effective (unless such new exempt amount is prevented from becoming effective by subparagraph (C) of this paragraph) with respect to any individual's taxable year which ends with the close of or after the calendar year with the first month of which such benefit increase is effective (or, in the case of an individual who dies during such calendar year, with respect to such individual's taxable year which ends, upon his death, during such year).*

(B) *The exempt amount for each month of a particular taxable year shall be whichever of the following is the larger—*

*(i) the exempt amount which was in effect with respect to months in the taxable year in which the determination under subparagraph (A) was made, or*

*(ii) the product of the exempt amount described in clause (i) and the ratio of (I) the average of the taxable wages of all employees as reported to the Secretary for the first calendar quarter of the calendar year in which the determination under subparagraph (A) was made to (II) the average of the taxable wages of all employees as reported to the Secretary for the first calendar quarter of 1972 or, if later, the first calendar quarter of the most recent calendar year in which an increase in the contribution and benefit base was enacted or a determination resulting in such an increase was*

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*made under section 230(a), with such product, if not a multiple of \$10, being rounded to the next higher multiple of \$10 where such product is a multiple of \$5 but not of \$10 and to the nearest multiple of \$10 in any other case.*

*Whenever the Secretary determines that the exempt amount is to be increased in any year under this paragraph, he shall notify the House Committee on Ways and Means and the Senate Committee on Finance no later than August 15 of such year of the estimated amount of such increase, indicating the new exempt amount, the actuarial estimates of the effect of the increase, and the actuarial assumptions and methodology used in preparing such estimates.*

*(C) Notwithstanding the determination of a new exempt amount by the Secretary under subparagraph (A) (and notwithstanding any publication thereof under such subparagraph or any notification thereof under the last sentence of subparagraph (B)), such new exempt amount shall not take effect pursuant thereto if during the calendar year in which such determination is made a law increasing the exempt amount or providing a general benefit increase under this title (as defined in section 215(i)(3)) is enacted.*

#### Penalty for Failure to Report Certain Events

(g) Any individual in receipt of benefits subject to deduction under subsection (c) (or who is in receipt of such benefits on behalf of another individual), because of the occurrence of an event specified therein, who fails to report such occurrence to the Secretary prior to the receipt and acceptance of an insurance benefit for the second month following the month in which such event occurred, shall suffer deductions in addition to those imposed under subsection (c) as follows:

(1) if such failure is the first one with respect to which an additional deduction is imposed by this subsection, such additional deduction shall be equal to his benefit or benefits for the first month of the period for which there is a failure to report even though such failure is with respect to more than one month;

(2) if such failure is the second one with respect to which an additional deduction is imposed by this subsection, such additional deduction shall be equal to two times his benefit or benefits for the first month of the period for which there is a failure to report even though such failure is with respect to more than two months; and

(3) if such failure is the third or a subsequent one for which an additional deduction is imposed under this subsection, such additional deduction shall be equal to three times his benefit or benefits for the first month of the period for which there is a failure to report even though the failure to report is with respect to more than three months;

except that the number of additional deductions required by this subsection shall not exceed the number of months in the period for which there is a failure to report. As used in this subsection, the term "period for which there is a failure to report" with respect to any individual means the period for which such individual received and accepted insurance benefits under section 202 without making a timely report and for which deductions are required under subsection (c).

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## Report of Earnings to Secretary

(h) (1) (A) If an individual is entitled to any monthly insurance benefit under section 202 during any taxable year in which he has earnings or wages, as computed pursuant to paragraph (5) of subsection (f), in excess of the product of ~~[\$140]~~  $\$100.00\frac{2}{3}$  or the exempt amount as determined under subsection (f)(8)<sup>1</sup> times the number of months in such year, such individual (or the individual who is in receipt of such benefit on his behalf) shall make a report to the Secretary of his earnings (or wages) for such taxable year. Such report shall be made on or before the fifteenth day of the fourth month following the close of such year, and shall contain such information and be made in such manner as the Secretary may by regulations prescribe. Such report need not be made for any taxable year (i) beginning with or after the month in which such individual attained the age of 72, or (ii) if benefit payments for all months (in such taxable year) in which such individual is under age 72 have been suspended under the provisions of the first sentence of paragraph (3) of this subsection. The Secretary may grant a reasonable extension of time for making the report of earnings required in this paragraph if he finds that there is valid reason for a delay, but in no case may the period be extended more than three months.

(B) If the benefit payments of an individual have been suspended for all months in any taxable year under the provisions of the first sentence of paragraph (3) of this subsection, no benefit payment shall be made to such individual for any such month in such taxable year after the expiration of the period of three years, three months, and fifteen days following the close of such taxable year unless within such period the individual, or some other person entitled to benefits under this title on the basis of the same wages and self-employment income, files with the Secretary information showing that a benefit for such month is payable to such individual.

(2) If an individual fails to make a report required under paragraph (1), within the time prescribed by or in accordance with such paragraph, for any taxable year and any deduction is imposed under subsection (b) by reason of his earnings for such year, he shall suffer additional deductions as follows:

(A) if such failure is the first one with respect to which an additional deduction is imposed under this paragraph, such additional deduction shall be equal to his benefit or benefits for the last month of such year for which he was entitled to a benefit under section 202, except that if the deduction imposed under subsection (b) by reason of his earnings for such year is less than the amount of his benefit (or benefits) for the last month of such year for which he was entitled to a benefit under section 202, the additional deduction shall be equal to the amount of the deduction imposed under subsection (b) but not less than \$10;

(B) if such failure is the second one for which an additional deduction is imposed under this paragraph, such additional deduction shall be equal to two times his benefit or benefits for the last month of such year for which he was entitled to a benefit under section 202;

(C) if such failure is the third or a subsequent one for which an additional deduction is imposed under this paragraph, such addi-

<sup>1</sup> Applies with respect to taxable years ending after December 1971.



tional deduction shall be equal to three times his benefit or benefits for the last month of such year for which he was entitled to a benefit under section 202;

except that the number of the additional deductions required by this paragraph with respect to a failure to report earnings for a taxable year shall not exceed the number of months in such year for which such individual received and accepted insurance benefits under section 202 and for which deductions are imposed under subsection (b) by reason of his earnings. In determining whether a failure to report earnings is the first or a subsequent failure for any individual, all taxable years ending prior to the imposition of the first additional deduction under this paragraph, other than the latest one of such years, shall be disregarded.

(3) If the Secretary determines, on the basis of information obtained by or submitted to him, that it may reasonably be expected that an individual entitled to benefits under section 202 for any taxable year will suffer deductions imposed under subsection (b) by reason of his earnings for such year, the Secretary may, before the close of such taxable year, suspend the total or less than the total payment for each month in such year (or for only such months as the Secretary may specify) of the benefits payable on the basis of such individual's wages and self-employment income; and such suspension shall remain in effect with respect to the benefits for any month until the Secretary has determined whether or not any deduction is imposed for such month under subsection (b). The Secretary is authorized, before the close of the taxable year of an individual entitled to benefits during such year, to request of such individual that he make, at such time or times as the Secretary may specify, a declaration of his estimated earnings for the taxable year and that he furnish to the Secretary such other information with respect to such earnings as the Secretary may specify. A failure by such individual to comply with any such request shall in itself constitute justification for a determination under this paragraph that it may reasonably be expected that the individual will suffer deductions imposed under subsection (b) by reason of his earnings for such year. If, after the close of a taxable year of an individual entitled to benefits under section 202 for such year, the Secretary requests such individual to furnish a report of his earnings (as computed pursuant to paragraph (5) of subsection (f) for such taxable year or any other information with respect to such earnings which the Secretary may specify, and the individual fails to comply with such request, such failure shall in itself constitute justification for a determination that such individual's benefits are subject to deductions under subsection (b) for each month in such taxable year (or only for such months thereof as the Secretary may specify) by reason of his earnings for such year.

#### Circumstances Under Which Deductions and Reductions Not Required

(i) In the case of any individual, deductions by reason of the provisions of subsection (b), (c), (g), or (h) of this section, or the provisions of section 222(b), shall, notwithstanding such provisions, be made from the benefit to which such individual is entitled only to the extent that such deductions reduce the total amount which would otherwise be paid, on the basis of the same wages and self-employment

income, to such individual and the other individuals living in the same household.

#### Attainment of Age Seventy-two

(j) For the purposes of this section, an individual shall be considered as seventy-two years of age during the entire month in which he attains such age.

#### Noncovered Remunerative Activity Outside the United States

(k) An individual shall be considered to be engaged in noncovered remunerative activity outside the United States if he performs services outside the United States as an employee and such services do not constitute employment as defined in section 210 and are not performed in the active military or naval service of the United States, or if he carries on a trade or business outside the United States (other than the performance of service as an employee) the net income or loss of which (1) is not includible in computing his net earnings from self-employment for a taxable year and (2) would not be excluded from net earnings from self-employment, if carried on in the United States, by any of the numbered paragraphs of section 211(a). When used in the preceding sentence with respect to a trade or business (other than the performance of service as an employee), the term "United States" does not include the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa in the case of an alien who is not a resident of the United States (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa) and the term "trade or business" shall have the same meaning as when used in Section 162 of the Internal Revenue Code of 1954.

#### Good Cause for Failure To Make Reports Required

(l) The failure of an individual to make any report required by subsection (g) or (h) (1) (A) within the time prescribed therein shall not be regarded as such a failure if it is shown to the satisfaction of the Secretary that he had good cause for failing to make such report within such time. The determination of what constitutes good cause for purposes of this subsection shall be made in accordance with regulations of the Secretary.

#### Overpayments and Underpayments

Sec. 204. (a) Whenever the Secretary finds that more or less than the correct amount of payment has been made to any person under this title, proper adjustment or recovery shall be made, under regulations prescribed by the Secretary, as follows:

(1) With respect to payment to a person of more than the correct amount, the Secretary shall decrease any payment under this title to which such overpaid person is entitled, or shall require such overpaid person or his estate to refund the amount in excess of the correct amount, or shall decrease any payment under this title payable to his estate or to any other person on the basis of the wages and self-employment income which were the basis of the payments to such overpaid person, or shall apply any combination of the foregoing. A payment made under this title on the basis of an erroneous report of death by

the Department of Defense of an individual in the line of duty while he is a member of the uniformed services (as defined in section 210(m)) on active duty (as defined in section 210(l)) shall not be considered an incorrect payment for any month prior to the month such Department notifies the Secretary that such individual is alive.

(2) With respect to payment to a person less than the correct amount, the Secretary shall make payment of the balance of the amount due such underpaid person, or, if such person dies before payments are completed or before negotiating one or more checks representing correct payments, disposition of the amount due shall be made in accordance with subsection (d).

(b) In any case in which more than the correct amount of payment has been made, there shall be no adjustment of payments to, or recovery by the United States from, any person who is without fault if such adjustment or recovery would defeat the purpose of this title or would be against equity and good conscience.

(c) No certifying or disbursing officer shall be held liable for any amount certified or paid by him to any person where the adjustment or recovery of such amount is waived under subsection (b), or where adjustment under subsection (a) is not completed prior to the death of all persons against whose benefits deductions are authorized.

(d) If an individual dies before any payment due him under this title is completed, payment of the amount due (including the amount of any unnegotiated checks) shall be made—

(1) to the person, if any, who is determined by the Secretary to be the surviving spouse of the deceased individual and who either (i) was living in the same household with the deceased at the time of his death or (ii) was, for the month in which the deceased individual died, entitled to a monthly benefit on the basis of the same wages and self-employment income as was the deceased individual;

(2) if there is no person who meets the requirements of paragraph (1), or if the person who meets such requirements dies before the payment due him under this title is completed, to the child or children, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(3) if there is no person who meets the requirements of paragraph (1) or (2), or if each person who meets such requirements dies before the payment due him under this title is completed, to the parent or parents, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent);

(4) if there is no person who meets the requirements of paragraph (1), (2), or (3), or if each person who meets such requirements dies before the payment due him under this title is completed, to the person, if any, determined by the Secretary to be the surviving spouse of the deceased individual;

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(5) if there is no person who meets the requirements of paragraph (1), (2), (3), or (4), or if each person who meets such requirements dies before the payment due him under this title is completed, to the person or persons, if any, determined by the Secretary to be the child or children of the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(6) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), or (5), or if each person who meets such requirements dies before the payment due him under this title is completed, to the parent or parents, if any, of the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent); or

(7) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), (5), or (6), or if each person who meets such requirements dies before the payment due him under this title is completed, to the legal representative of the estate of the deceased individual, if any.

### **Evidence, Procedure, and Certification for Payment**

**Sec. 205. (a)** The Secretary shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

(b) The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for a payment under this title. Upon request by any such individual or upon request by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, husband, widower, child, or parent who makes a showing in writing that his or her rights may be prejudiced by any decision the Secretary has rendered, he shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse his findings of fact and such decision. Any such request with respect to such a decision must be filed within such period after such decision as may be prescribed in regulations of the Secretary, except that the period so prescribed may not be less than six months after notice of such decision is mailed to the individual making such request. The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this title. In the course of any hearing, investigation, or other proceeding, he may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Secretary even though inadmissible under rules of evidence applicable to court procedure.

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(c) (1) For the purposes of this subsection

(A) The term "year" means a calendar year when used with respect to wages and a taxable year (as defined in section 211(e)) when used with respect to self-employment income.

(B) The term "time limitation" means a period of three years, three months, and fifteen days.

(C) The term "survivor" means an individual's spouse, surviving divorced wife, surviving divorced mother, child, or parent, who survives such individual.

(2) On the basis of information obtained by or submitted to the Secretary, and after such verification thereof as he deems necessary, the Secretary shall establish and maintain records of the amounts of wages paid to, and the amounts of self-employment income derived by, each individual and of the periods in which such wages were paid and such income was derived and, upon request, shall inform any individual or his survivor, or the legal representative of such individual or his estate, of the amounts of wages and self-employment income of such individual and the periods during which such wages were paid and such income was derived, as shown by such records at the time of such request.

(3) The Secretary's record shall be evidence for the purpose of proceedings before the Secretary or any court of the amounts of wages paid to, and self-employment income derived by, an individual and of the periods in which such wages were paid and such income was derived. The absence of an entry in such records as to wages alleged to have been paid to, or as to self-employment income alleged to have been derived by, an individual in any period shall be evidence that no such alleged wages were paid to, or that no such alleged income was derived by, such individual during such period.

(4) Prior to the expiration of the time limitation following any year the Secretary may, if it is brought to his attention that any entry of wages or self-employment income in his records for such year is erroneous or that any item of wages or self-employment income for such year has been omitted from such records, correct such entry or include such omitted item in his records, as the case may be. After the expiration of the time limitation following any year—

(A) the Secretary's records (with changes, if any, made pursuant to paragraph (5)) of the amounts of wages paid to, and self-employment income derived by, an individual during any period in such year shall be conclusive for the purposes of this title;

(B) the absence of an entry in the Secretary's records as to the wages alleged to have been paid by an employer to an individual during any period in such year shall be presumptive evidence for the purposes of this title that no such alleged wages were paid to such individual in such period; and

(C) the absence of an entry in the Secretary's records as to the self-employment income alleged to have been derived by an individual in such year shall be conclusive for the purposes of this title that no such alleged self-employment income was derived by such individual in such year unless it is shown that he filed a tax return of his self-employment income for such year before

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the expiration of the time limitation following such year, in which case the Secretary shall include in his records the self-employment income of such individual for such year.

(5) After the expiration of the time limitation following any year in which wages were paid or alleged to have been paid to, or self-employment income was derived or alleged to have been derived by, an individual, the Secretary may change or delete any entry with respect to wages or self-employment income in his records of such year for such individual or include in his records of such year for such individual any omitted item of wages or self-employment income but only—

(A) if an application for monthly benefits or for a lump-sum death payment was filed within the time limitation following such year; except that no such change, deletion, or inclusion may be made pursuant to this subparagraph after a final decision upon the application for monthly benefits or lump-sum death payment;

(B) if within the time limitation following such year an individual or his survivor makes a request for a change or deletion, or for an inclusion of an omitted item, and alleges in writing, that the Secretary's records of the wages paid to, or the self-employment income derived by, such individual in such year are in one or more respects erroneous; except that no such change, deletion, or inclusion may be made pursuant to this subparagraph after a final decision upon such request. Written notice of the Secretary's decision on any such request shall be given to the individual who made the request;

(C) to correct errors apparent on the face of such records;

(D) to transfer items to records of the Railroad Retirement Board if such items were credited under this title when they should have been credited under the Railroad Retirement Act, or to enter items transferred by the Railroad Retirement Board which have been credited under the Railroad Retirement Act when they should have been credited under this title;

(E) to delete or reduce the amount of any entry which is erroneous as a result of fraud;

(F) to conform his records to—

(i) tax returns or portions thereof (including information returns and other written statements) filed with the Commissioner of Internal Revenue under title VIII of the Social Security Act, under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code of 1939, under chapter 2 or 21 of the Internal Revenue Code of 1954, or under regulations made under authority of such title, subchapter, or chapter;

(ii) wage reports filed by a State pursuant to an agreement under section 218 or regulations of the Secretary, thereunder; or

(iii) assessments of amounts due under an agreement pursuant to section 218, if such assessments are made within the period specified in subsection (q) of such section, or allowances of credits or refunds of overpayments by a State under an agreement pursuant to such section;

except that no amount of self-employment income of an individual for any taxable year (if such return or statement was filed

after the expiration of the time limitation following the taxable year) shall be included in the Secretary's records pursuant to this subparagraph;

(G) to correct errors made in the allocation, to individuals or periods, of wages or self-employment income entered in the records of the Secretary;

(H) to include wages paid during any period in such year to an individual by an employer if there is an absence of an entry in the Secretary's records of wages having been paid by such employer to such individual in such period;

(I) to enter items which constitute remuneration for employment under subsection (o), such entries to be in accordance with certified reports of records made by the Railroad Retirement Board pursuant to section 5(k) (3) of the Railroad Retirement Act of 1937; or

(J) to include self-employment income for any taxable year, up to, but not in excess of, the amount of wages deleted by the Secretary as payments erroneously included in such records as wages paid to such individual, if such income (or net earnings from self-employment), not already included in such records as self-employment income, is included in a return or statement (referred to in subparagraph (F)) filed before the expiration of the time limitation following the taxable year in which such deletion of wages is made.

(6) Written notice of any deletion or reduction under paragraph (4) or (5) shall be given to the individual whose record is involved or to his survivor, except that (A) in the case of a deletion or reduction with respect to any entry of wages such notice shall be given to such individual only if he has previously been notified by the Secretary of the amount of his wages for the period involved, and (B) such notice shall be given to such survivor only if he or the individual whose record is involved has previously been notified by the Secretary of the amount of such individual's wages and self-employment income for the period involved.

(7) Upon request in writing (within such period, after any change or refusal of a request for a change of his records pursuant to this subsection, as the Secretary may prescribe), opportunity for hearing with respect to such change or refusal shall be afforded to any individual or his survivor. If a hearing is held pursuant to this paragraph the Secretary shall make findings of fact and a decision based upon the evidence adduced at such hearing and shall include any omitted items, or change or delete any entry, in his records as may be required by such findings and decision.

(8) Decisions of the Secretary under this subsection shall be reviewable by commencing a civil action in the United States district court as provided in subsection (g).

(d) For the purpose of any hearing, investigation, or other proceeding authorized or directed under this title, or relative to any other matter within his jurisdiction hereunder, the Secretary shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the Secretary. Such attendance of witnesses and production of evidence at the designated place of such hearing, investigation, or other proceeding may be re-

quired from any place in the United States or in any Territory or possession thereof. Subpenas of the Secretary shall be served by anyone authorized by him (1) by delivering a copy thereof to the individual named therein, or (2) by registered mail or by certified mail addressed to such individual at his last dwelling place or principal place of business. A verified return by the individual so serving the subpoena setting forth the manner of service, or, in the case of service by registered mail or by certified mail, the return post-office receipt therefor signed by the individual so served, shall be proof of service. Witnesses so subpoenaed shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

(e) In case of contumacy by, or refusal to obey a subpoena duly served upon, any person, any district court of the United States for the judicial district in which said person charged with contumacy or refusal to obey is found or resides or transacts business, upon application by the Secretary, shall have jurisdiction to issue an order requiring such person to appear and give testimony, or to appear and produce evidence, or both; any failure to obey such order of the court may be punished by said court as contempt thereof.

(f) No person so subpoenaed or ordered shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence except that such person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(g) Any individual, after any final decision of the Secretary made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Secretary may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business, or, if he does not reside or have his principal place of business within any such judicial district, in the District Court of the United States for the District of Columbia. As part of his answer the Secretary shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing. The findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive, and where a claim has been denied by the Secretary or a decision is rendered under subsection (b) hereof which is adverse to an individual who was a party to the hearing before the Secretary, because of failure of the claimant or such individual to submit proof in conformity with any regulation prescribed under subsection (a) hereof, the court shall review only the question of conformity with such regulations and the validity of such regulations. The court shall, on motion of the Secretary made before he files his answer, remand



the case to the Secretary for further action by the Secretary, and may, at any time, on good cause shown, order additional evidence to be taken before the Secretary, and the Secretary shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm his findings of fact or his decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which his action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision. The judgment of the court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

(h) The findings and decision of the Secretary after a hearing shall be binding upon all individuals who were parties to such hearing. No findings of fact or decision of the Secretary shall be reviewed by any person, tribunal, or governmental agency except as herein provided. No action against the United States, the Secretary, or any officer or employee thereof shall be brought under Section 24 of the Judicial Code of the United States to recover on any claim arising under this title.

(i) Upon final decision of the Secretary, or upon final judgment of any court of competent jurisdiction, that any person is entitled to any payment or payments under this title, the Secretary shall certify to the Managing Trustee the name and address of the person so entitled to receive such payment or payments, the amount of such payment or payments, and the time at which such payment or payments should be made, and the Managing Trustee, through the Fiscal Service of the Treasury Department, and prior to any action thereon by the General Accounting Office, shall make payment in accordance with the certification of the Secretary: *Provided*, That where a review of the Secretary's decision is or may be sought under subsection (g) the Secretary may withhold certification of payment pending such review. The Managing Trustee shall not be held personally liable for any payment or payments made in accordance with a certification by the Secretary.

(j) When it appears to the Secretary that the interest of an applicant entitled to a payment would be served thereby, certification of payment may be made, regardless of the legal competency or incompetency of the individual entitled thereto, either for direct payment to such applicant, or for his use and benefit to a relative or some other person.

(k) Any payment made after December 31, 1939, under conditions set forth in subsection (j), any payment made before January 1, 1940, to, or on behalf of, a legally incompetent individual, and any payment made after December 31, 1939, to a legally incompetent individual without knowledge by the Secretary of incompetency prior to certification of payment, if otherwise valid under this title, shall be a complete settlement, and satisfaction of any claim, right, or interest in and to such payment.

(l) The Secretary is authorized to delegate to any member, officer, or employee of the Department of Health, Education, and Welfare designated by him any of the powers conferred upon him by this section, and is authorized to be represented by his own attorneys in any

court in any case or proceeding arising under the provisions of subsection (e).

(m) [Repealed.]

(n) The Secretary may, in his discretion, certify to the Managing Trustee any two or more individuals of the same family for joint payment of the total benefits payable to such individuals for any month, and if one of such individuals dies before a check representing such joint payment is negotiated, payment of the amount of such unnegotiated check to the surviving individual or individuals may be authorized in accordance with regulations of the Secretary of the Treasury; except that appropriate adjustment or recovery shall be made under section 204(a) with respect to so much of the amount of such check as exceeds the amount to which such surviving individual or individuals are entitled under this title for such month.

#### Crediting of Compensation Under the Railroad Retirement Act

(o) If there is no person who would be entitled, upon application therefor, to an annuity under section 5 of the Railroad Retirement Act of 1937, or to a lump-sum payment under subsection (f) (1) of such section, with respect to the death of an employee (as defined in such Act), then, notwithstanding section 210(a) (9) of this Act, compensation (as defined in such Railroad Retirement Act, but excluding compensation attributable as having been paid during any month on account of military service creditable under section 4 of such Act if wages are deemed to have been paid to such employee during such month under subsection (a) or (e) of section 217 of this Act) of such employee shall constitute remuneration for employment for purposes of determining (A) entitlement to and the amount of any lump-sum death payment under this title on the basis of such employee's wages and self-employment income and (B) entitlement to and the amount of any monthly benefit under this title, for the month in which such employee died or for any month thereafter, on the basis of such wages and self-employment income. For such purposes, compensation (as so defined) paid in a calendar year shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the year in which the employee rendered services for such compensation.

#### Special Rules in Case of Federal Service

(p) (1) With respect to service included as employment under section 210 which is performed in the employ of the United States or in the employ of any instrumentality which is wholly owned by the United States, including service, performed as a member of a uniformed service, to which the provisions of subsection (l) (1) of such section are applicable, and including service, performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act, to which the provisions of section 210(o) are applicable, the Secretary shall not make determinations as to whether an individual has performed such service, the periods of such service, the amounts of remuneration for such service which constitute wages under the provisions of section 209, or the periods in which or for which such wages were paid, but shall accept the determinations with respect thereto of

the head of the appropriate Federal agency or instrumentality, and of such agents as such head may designate, as evidenced by returns filed in accordance with the provisions of section 3122 of the Internal Revenue Code of 1954 and certifications made pursuant to this subsection. Such determinations shall be final and conclusive.

(2) The head of any such agency or instrumentality is authorized and directed, upon written request of the Secretary, to make certification to him with respect to any matter determinable for the Secretary by such head or his agents under this subsection, which the Secretary finds necessary in administering this title.

(3) The provisions of paragraphs (1) and (2) shall be applicable in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; and for purposes of paragraphs (1) and (2) the Secretary of Defense shall be deemed to be the head of such instrumentality. The provisions of paragraphs (1) and (2) shall be applicable also in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of the Treasury, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard; and for purposes of paragraphs (1) and (2) the Secretary of the Treasury shall be deemed to be the head of such instrumentality.

#### Expedited Benefit Payments

(q) (1) The Secretary shall establish and put into effect procedures under which expedited payment of monthly insurance benefits under this title will, subject to paragraph (4) of this subsection, be made as set forth in paragraphs (2) and (3) of this subsection.

(2) In any case in which—

(A) an individual makes an allegation that a monthly benefit under this title was due him in a particular month but was not paid to him, and

(B) such individual submits a written request for the payment of such benefit—

(i) in the case of an individual who received a regular monthly benefit in the month preceding the month with respect to which such allegation is made, not less than 30 days after the 15th day of the month with respect to which such allegation is made (and in the event that such request is submitted prior to the expiration of such 30-day period, it shall be deemed to have been submitted upon the expiration of such period), and

(ii) in any other case, not less than 90 days after the later of (I) the date on which such benefit is alleged to have been

due, or (II) the date on which such individual furnished the last information requested by the Secretary (and such written request will be deemed to be filed on the day on which it was filed, or the ninetieth day after the first day on which the Secretary has evidence that such allegation is true, whichever is later),

the Secretary shall, if he finds that benefits are due, certify such benefits for payment, and payment shall be made within 15 days immediately following the date on which the written request is deemed to have been filed.

(3) In any case in which the Secretary determines that there is evidence, although additional evidence might be required for a final decision, that an allegation described in paragraph (2) (A) is true, he may make a preliminary certification of such benefit for payment even though the 30-day or 90-day periods described in paragraph (2) (B) (i) and (B) (ii) have not elapsed.

(4) Any payment made pursuant to a certification under paragraph (3) of this subsection shall not be considered an incorrect payment for purposes of determining the liability of the certifying or disbursing officer.

(5) For purposes of this subsection, benefits payable under section 228 shall be treated as monthly insurance benefits payable under this title. However, this subsection shall not apply with respect to any benefit for which a check has been negotiated, or with respect to any benefit alleged to be due under either section 223, or section 202 to a wife, husband, or child of an individual entitled to or applying for benefits under section 223, or to a child who has attained age 18 and is under a disability, or to a widow or widower on the basis of being under a disability.

### Representation of Claimants

**Sec. 206.** (a) The Secretary may prescribe rules and regulations governing the recognition of agents or other persons, other than attorneys as hereinafter provided, representing claimants before the Secretary, and may require of such agents or other persons, before being recognized as representatives of claimants that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. An attorney in good standing who is admitted to practice before the highest court of the State, Territory, District, or insular possession of his residence or before the Supreme Court of the United States or the inferior Federal courts, shall be entitled to represent claimants before the Secretary. The Secretary may, after due notice and opportunity for hearing, suspend or prohibit from further practice before him any such person, agent, or attorney who refuses to comply with the Secretary's rules and regulations or who violates any provision of this section for which a penalty is prescribed. The Secretary may, by rule and regulation, prescribe the maximum fees which may be charged for services performed in connection with any claim before the Secretary under this title, and any agreement in violation of such rules and regulations shall be

void. Whenever the Secretary, in any claim before him for benefits under this title, makes a determination favorable to the claimant, he shall, if the claimant was represented by an attorney in connection with such claim, fix (in accordance with the regulations prescribed pursuant to the preceding sentence) a reasonable fee to compensate such attorney for the services performed by him in connection with such claim. If, as a result of such determination, such claimant is entitled to past-due benefits under this title, the Secretary shall, notwithstanding section 205(i), certify for payment (out of such past-due benefits) to such attorney an amount equal to whichever of the following is the smaller: (A) 25 per centum of the total amount of such past-due benefits, (B) the amount of the attorney's fee so fixed, or (C) the amount agreed upon between the claimant and such attorney as the fee for such attorney's services. Any person who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant or beneficiary under this title by word, circular, letter, or advertisement, or who shall knowingly charge or collect directly or indirectly any fee in excess of the maximum fee, or make any agreement directly or indirectly to charge or collect any fee in excess of the maximum fee, prescribed by the Secretary shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine not exceeding \$500 or by imprisonment not exceeding one year, or both.

(b) (1) Whenever a court renders a judgment favorable to a claimant under this title who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment, and the Secretary may, notwithstanding the provisions of section 205(i), certify the amount of such fee for payment to such attorney out of, and not in addition to, the amount of such past-due benefits. In case of any such judgment, no other fee may be payable or certified for payment for such representation except as provided in this paragraph.

(2) Any attorney who charges, demands, receives, or collects for services rendered in connection with proceedings before a court to which paragraph (1) is applicable any amount in excess of that allowed by the court thereunder shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than \$500, or imprisonment for not more than one year, or both.

### Assignment

Sec. 207. The right of any person to any future payment under this title shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

### Penalties

Sec. 208. Whoever—

(a) for the purpose of causing an increase in any payment authorized to be made under this title, or for the purpose of causing any

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payment to be made where no payment is authorized under this title, shall make or cause to be made any false statement or representation (including any false statement or representation in connection with any matter arising under subchapter E of chapter 1, or subchapter A or E of chapter 9 of the Internal Revenue Code of 1939, or chapter 2 or 21 or subtitle F of the Internal Revenue Code of 1954) as to—

(1) whether wages were paid or received for employment (as said terms are defined in this title and the Internal Revenue Code), or the amount of wages or the period during which paid or the person to whom paid; or

(2) whether net earnings from self-employment (as such term is defined in this title and in the Internal Revenue Code) were derived, or as to the amount of such net earnings or the period during which or the person by whom derived; or

(3) whether a person entitled to benefits under this title had earnings in or for a particular period (as determined under section 203(f) of this title for purposes of deductions from benefits), or as to the amount thereof; or

(b) makes or causes to be made any false statement or representation of a material fact in any application for any payment or for a disability determination under this title; or

(c) at any time makes or causes to be made any false statement or representation of a material fact for use in determining rights to payment under this title; or

(d) having knowledge of the occurrence of any event affecting (1) his initial or continued right to any payment under this title, or (2) the initial or continued right to any payment of any other individual in whose behalf he has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure payment either in a greater amount than is due or when no payment is authorized; or

(e) having made application to receive payment under this title for the use and benefit of another and having received such a payment, knowingly and willfully converts such a payment, or any part thereof, to a use other than for the use and benefit of such other person, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned for not more than one year, or both, or

(f) *willfully, knowingly, and with intent to deceive the Secretary as to his true identity (or the true identity of any other person) furnishes or causes to be furnished false information to the Secretary with respect to any information required by the Secretary in connection with the establishment and maintenance of the records provided for in section 205(c)(2);*<sup>1</sup>

### Definition of Wages

**Sec. 209.** For the purposes of this title, the term "wages" means remuneration paid prior to 1951 which was wages for the purposes of this title under the law applicable to the payment of such remuneration, and remuneration paid after 1950 for employment, including the cash value of all remuneration paid in any medium other than cash; except that, in the case of remuneration paid after 1950, such term shall not include—

<sup>1</sup> Applies with respect to information furnished to the Secretary after the date of enactment.

(a)(1) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to \$3,600 with respect to employment has been paid to an individual during any calendar year prior to 1955, is paid to such individual during such calendar year;

(2) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to \$4,200 with respect to employment has been paid to an individual during any calendar year after 1954 and prior to 1959, is paid to such individual during such calendar year;

(3) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to \$4,800 with respect to employment has been paid to an individual during any calendar year after 1958 and prior to 1966, is paid to such individual during such calendar year;

(4) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to \$6,600 with respect to employment has been paid to an individual during any calendar year after 1965 and prior to 1968, is paid to such individual during such calendar year;

(5) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to \$7,800 with respect to employment has been paid to an individual during any calendar year after 1967 and prior to 1972, is paid to such individual during such calendar year;

(6) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to ~~[\$9,000]~~ \$10,200<sup>1</sup> with respect to employment has been paid to an individual during any calendar year after 1971 and prior to 1973<sup>1</sup> is paid to such individual during any such calendar year:

(7) *That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to the contribution and benefit base (determined under section 23C) with respect to employment has been paid to an individual during any calendar year after 1972 with respect to which such contribution and benefit base is effective, is paid to such individual during such calendar year;*<sup>1</sup>

(b) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of (1) retirement, or (2) sickness or accident disability, or (3) medical or hospitalization expenses in connection with sickness or accident disability, or (4) death;

(c) Any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

<sup>1</sup> Applies with respect to remuneration paid after December 1971.





(i) Any payment (other than vacation or sick pay) made to an employee after the month in which he attains age 62 [(if a woman) or age 65 (if a man),]<sup>1</sup> if he did not work for the employer in the period for which such payment is made. As used in this subsection, the term "sick pay" includes remuneration for service in the employ of a State, a political subdivision (as defined in section 218(b)(2)) of a State, or an instrumentality of two or more States, paid to an employee thereof for a period during which he was absent from work because of sickness;

(j) Remuneration paid by an employer in any quarter to an employee for service described in section 210(j)(3)(C) (relating to home workers), if the cash remuneration paid in such quarter by the employer to the employee for such service is less than \$50;

(k) Remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 of the Internal Revenue Code of 1954;

(1) (1) Tips paid in any medium other than cash;

(2) Cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is \$20 or more; [or]

(m) Any payment or series of payments by an employer to an employee or any of his dependents which is paid—

(1) upon or after the termination of an employee's employment relationship because of (A) death, (B) retirement for disability, or (C) retirement after attaining an age specified in the plan referred to in paragraph (2) or in a pension plan of the employer, and

(2) under a plan established by the employer which makes provision for his employees generally or a class or classes of his employees (or for such employees or class or classes of employees and their dependents),

other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated[.]; or

(n) *Any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died.*<sup>2</sup>

For purposes of this title, in the case of domestic service described in subsection (g)(2), any payment of cash remuneration for such service which is more or less than a whole-dollar amount shall, under such conditions and to such extent as may be prescribed by regulations made under this title, be computed to the nearest dollar. For the purpose of the computation to the nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to \$1. The amount of any payment of cash remuneration so computed to the nearest dollar shall, in lieu of the amount actually paid, be deemed to constitute the amount of cash remuneration for purposes of subsection (g)(2).

<sup>1</sup> Applies only with respect to payments after 1973.

<sup>2</sup> Applies to payments made after December 1971.

For purposes of this title, in the case of an individual performing service, as a member of a uniformed service, to which the provisions of section 210(1) (1) are applicable, the term "wages" shall, subject to the provisions of subsection (a) of this section, include as such individual's remuneration for such service only his basic pay as described in section 102(10) of the Servicemen's and Veterans' Survivor Benefits Act.

For purposes of this title, in the case of an individual performing service, as a volunteer or volunteer leader within the meaning of the Peace Corps Act, to which the provisions of section 210(o) are applicable, (1) the term "wages" shall, subject to the provisions of subsection (a) of this section, include as such individual's remuneration for such service only amounts certified as payable pursuant to section 5(c) or 6(1) of the Peace Corps Act, and (2) any such amount shall be deemed to have been paid to such individual at the time the service, with respect to which it is paid, is performed.

For purposes of this title, tips received by an employee in the course of his employment shall be considered remuneration for employment. Such remuneration shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) of the Internal Revenue Code of 1954 or (if no statement including such tips is so furnished) at the time received.

*For purposes of this title, in any case where an individual is a member of a religious order (as defined in section 3121(r) (2) of the Internal Revenue Code of 1954) performing service in the exercise of duties required by such order, and an election of coverage under section 3121(r) of such Code is in effect with respect to such order or with respect to the autonomous subdivision thereof to which such member belongs, the term "wages" shall, subject to the provisions of subsection (a) of this section, include as such individual's remuneration for such service the fair market value of any board, lodging, clothing, and other perquisites furnished to such member by such order or subdivision thereof or by any other person or organization pursuant to an agreement with such order or subdivision, except that the amount included as such individual's remuneration under this paragraph shall not be less than \$100 a month.*

### Definition of Employment

Sec. 210. For the purposes of this title—

#### Employment

(a) The term "employment" means any service performed after 1936 and prior to 1951 which was employment for the purposes of this title under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1950 either (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and

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in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen of the United States as an employee (i) of an American employer (as defined in subsection (e)), or (ii) of a foreign subsidiary (as defined in section 3121(1) of the Internal Revenue Code of 1954) of a domestic corporation (as determined in accordance with section 7701 of the Internal Revenue Code of 1954) during any period for which there is in effect an agreement, entered into pursuant to section 3121(1) of the Internal Revenue Code of 1954, with respect to such subsidiary; except that, in the case of service performed after 1950, such term shall not include—

(1) service performed by foreign agricultural workers (A) under contracts entered into in accordance with title V of the Agricultural Act of 1949, as amended, or (B) lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West Indies, or from any other foreign country or possession thereof, on a temporary basis to perform agricultural labor;

(2) domestic service performed in a local college club, or local chapter of a college fraternity or sorority, by a student who is enrolled and is regularly attending classes at a school, college, or university;

(3) (A) service performed by an individual in the employ of his spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(B) service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual in the employ of his son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service if—

(i) the employer is a surviving spouse or a divorced individual and has not remarried, or has a spouse living in the home who has a mental or physical condition which results in such spouse's being incapable of caring for a son, daughter, stepson, or stepdaughter (referred to in clause (ii)) for at least 4 continuous weeks in the calendar quarter in which the service is rendered, and

(ii) a son, daughter, stepson, or stepdaughter of such employer is living in the home, and

(iii) the son, daughter, stepson, or stepdaughter (referred to in clause (ii)) has not attained age 18 or has a mental or physical condition which requires the personal care and supervision of an adult for at least 4 continuous weeks in the calendar quarter in which the service is rendered;

(4) service performed by an individual on or in connection with a vessel not an American vessel, or on or in connection with an aircraft not an American aircraft, if (A) the individual is employed on and in connection with such vessel or aircraft when outside the United States and (B) (i) such individual is not a citizen of the United States or (ii) the employer is not an American employer;

(5) service performed in the employ of any instrumentality of the United States, if such instrumentality is exempt from the

tax imposed by section 3111 of the Internal Revenue Code of 1954 by virtue of any provisions of law which specifically refers to such section in granting such exemption;

(6) (A) service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is covered by a retirement system established by a law of the United States;

(B) Service performed by an individual in the employ of an instrumentality of the United States if such an instrumentality was exempt from the tax imposed by section 1410 of the Internal Revenue Code of 1939 on December 31, 1950, and if such service is covered by a retirement system established by such instrumentality; except that the provisions of this subparagraph shall not be applicable to—

(i) service performed in the employ of a corporation which is wholly owned by the United States;

(ii) service performed in the employ of a Federal land bank, a Federal intermediate credit bank, a bank for cooperatives, a Federal land bank association, a production credit association, a Federal Reserve Bank, a Federal Home Loan Bank, or a Federal Credit Union;

(iii) service performed in the employ of a State, county, or community committee under the Production and Marketing Administration;

(iv) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; or

(v) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of the Treasury, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard;

(C) Service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is performed—

(i) as the President or Vice President of the United States or as a Member, Delegate, or Resident Commissioner of or to the Congress;

(ii) in the legislative branch;

(iii) in a penal institution of the United States by an inmate thereof;

(iv) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of

hospitals of the Federal Government), other than as a medical or dental intern or a medical or dental resident in training;

(v) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency; or

(vi) by any individual to whom subchapter III of chapter 83 of title 5, United States Code, does not apply because such individual is subject to another retirement system (other than the retirement system of the Tennessee Valley Authority);

(7) service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, except that this paragraph shall not apply in the case of—

(A) service included under an agreement under section 218,

(B) service which, under subsection (k), constitutes covered transportation service,

(C) service in the employ of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, performed by an officer or employee thereof (including a member of the legislature of any such Government or political subdivision), and, for purposes of this title—

(i) any person whose service as such an officer or employee is not covered by a retirement system established by a law of the United States shall not, with respect to such service, be regarded as an officer or employee of the United States or any agency or instrumentality thereof, and

(ii) the remuneration for service described in clause (i) (including fees paid to a public official) shall be deemed to have been paid by the Government of Guam or the Government of American Samoa or by a political subdivision thereof or an instrumentality of any one or more of the foregoing which is wholly owned thereby, whichever is appropriate, [or]

(D) service performed in the employ of the District of Columbia or any instrumentality which is wholly owned thereby, if such service is not covered by a retirement system established by a law of the United States; except that the provisions of this subparagraph shall not be applicable to service performed—

(i) in a hospital or penal institution by a patient or inmate thereof;

(ii) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or as a medical or dental resident in training;

(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency; or

(iv) by a member of a board, committee, or council of the District of Columbia, paid on a per diem, meeting, or other fee basis, or

*(E) service performed in the employ of the Government of Guam (or any instrumentality which is wholly owned by such Government) by an employee properly classified as a temporary or intermittent employee, if such service is not covered by a retirement system established by a law of Guam; except that (i) the provisions of this subparagraph shall not be applicable to services performed by an elected official or a member of the legislature or in a hospital or penal institution by a patient or inmate thereof, and (ii) for purposes of this subparagraph, clauses (i) and (ii) of subparagraph (C) shall apply;*<sup>1</sup>

(8) (A) service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order, *except that this subparagraph shall not apply to service performed by a member of such an order in the exercise of such duties, if an election of coverage under section 3121(r) of the Internal Revenue Code of 1954 is in effect with respect to such order, or with respect to the autonomous subdivision thereof to which such member belongs;*

(B) service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) of the Internal Revenue Code of 1954, which is exempt from income tax under section 501(a) of such Code, but this subparagraph shall not apply to service performed during the period for which a certificate, filed pursuant to section 3121(k) of the Internal Revenue Code of 1954, is in effect if such service is performed by an employee—

(i) whose signature appears on the list filed by such organization under such section 3121(k),

(ii) who became an employee of such organization after the calendar quarter in which the certificate (other than a certificate referred to in clause (iii)) was filed, or

(iii) who, after the calendar quarter in which the certificate was filed with respect to a group described in paragraph (1)(E) of such section 3121(k), became a member of such group,

except that this subparagraph shall apply with respect to service performed by an employee as a member of a group described in such paragraph (1)(E) with respect to which no certificate is in effect;

(9) service performed by an individual as an employee or employee representative as defined in section 3231 of the Internal Revenue Code of 1954;

(10) (A) service performed in any calendar quarter in the employ of any organization exempt from income tax under section

<sup>1</sup> Applies to services performed on and after the first day of the first calendar quarter beginning on or after the date of enactment.

501 of the Internal Revenue Code of 1954, if the remuneration for such service is less than \$50;

[(B) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university;]

(B) *service performed in the employ of—*

(i) *a school, college, or university, or*

(ii) *an organization described in section 509(a) (3) of the Internal Revenue Code of 1954 if the organization is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university and is operated, supervised, or controlled by or in connection with such school, college, or university, unless it is a school, college, or university of a State or a political subdivision thereof and the services in its employ performed by a student referred to in section 218(c) (5) are covered under the agreement between the Secretary of Health, Education, and Welfare and such State entered into pursuant to section 218; if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university;*<sup>1</sup>

(11) service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) if the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) if the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law;

(14) (A) service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such

<sup>1</sup> Applies to services performed after Dec. 31, 1971.

service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(15) service performed in the employ of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat. 669);

(16) service performed by an individual under an arrangement with the owner or tenant of land pursuant to which—

(A) such individual undertakes to produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land,

(B) the agricultural or horticultural commodities produced by such individual, or the proceeds therefrom, are to be divided between such individual and such owner or tenant, and

(C) the amount of such individual's share depends on the amount of the agricultural or horticultural commodities produced;

(17) service in the employ of any organization which is performed (A) in any quarter during any part of which such organization is registered, or there is in effect a final order of the Subversive Activities Control Board requiring such organization to register, under the Internal Security Act of 1950, as amended, as a Communist-action organization, a Communist-front organization, or a Communist-infiltrated organization, and (B) after June 30, 1956;

(18) service performed in Guam by a resident of the Republic of the Philippines while in Guam on a temporary basis as a non-immigrant alien admitted to Guam pursuant to section 101(a) (15) (H) (ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a) (15) (H) (ii)); or

(19) service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a) (15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be.

#### Included and Excluded Service

(b) If the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by paragraph (9) of subsection (a).



#### American Vessel

(c) The term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State.

#### American Aircraft

(d) The term "American aircraft" means an aircraft registered under the laws of the United States.

#### American Employer

(e) The term "American employer" means an employer which is (1) the United States or any instrumentality thereof, (2) a State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing, (3) an individual who is a resident of the United States, (4) a partnership, if two-thirds or more of the partners are residents of the United States, (5) a trust, if all of the trustees are residents of the United States, or (6) a corporation organized under the laws of the United States or of any State.

#### Agricultural Labor

(f) The term "agricultural labor" includes all service performed—

(1) on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

(4) (A) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed.

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(B) in the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A), but only if such operators produced all of the commodity with respect to which such service is performed. For the purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than twenty at any time during the calendar quarter in which such service is performed.

(5) on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

The provisions of subparagraphs (A) and (B) of paragraph (4) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

**Farm**

(g) The term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

**State**

(h) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

**United States**

(i) The term "United States" when used in a geographical sense means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

**Employee**

(j) The term "employee" means—

(1) any officer of a corporation; or  
 (2) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or

(3) any individual (other than an individual who is an employee under paragraph (1) or (2) of this subsection) who performs services for remuneration for any person—

(A) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or drycleaning services, for his principal;

(B) as a full-time life insurance salesman;

(C) as a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him; or

(D) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations;

if the contract of service contemplates that substantially all of such services are to be performed personally by such individual; except that an individual shall not be included in the term "employee" under the provisions of this paragraph if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed.

#### Covered Transportation Service

(k) (1) Except as provided in paragraph (2), all services performed in the employ of a State or political subdivision in connection with its operation of a public transportation system shall constitute covered transportation service if any part of the transportation system was acquired from private ownership after 1936 and prior to 1951.

(2) Service performed in the employ of a State or political subdivision in connection with the operation of its public transportation system shall not constitute covered transportation service if—

(A) any part of the transportation system was acquired from private ownership after 1936 and prior to 1951, and substantially all service in connection with the operation of the transportation system is, on December 31, 1950, covered under a general retirement system providing benefits which, by reason of a provision of the State constitution dealing specifically with retirement systems of the State or political subdivisions thereof, cannot be diminished or impaired; or

(B) no part of the transportation system operated by the State or political subdivision on December 31, 1950, was acquired from private ownership after 1936 and prior to 1951; except that if such State or political subdivision makes an acquisition after 1950 from private ownership of any part of its transportation system, then, in the case of any employee who—

(C) became an employee of such State or political subdivision in connection with and at the time of its acquisition after 1950 of such part, and

(D) prior to such acquisition rendered service in employment in connection with the operation of such part of the transportation system acquired by the State or political subdivision, the service of such employee in connection with the operation of the transportation system shall constitute covered transportation service, commencing with the first day of the third calendar quarter following the calendar quarter in which the acquisition of such part took place, unless on such first day such service of such employee is covered by a general retirement system which does not, with respect to such em-

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ployee, contain special provisions applicable only to employees described in subparagraph (C).

(3) All service performed in the employ of a State or political subdivision thereof in connection with its operation of a public transportation system shall constitute covered transportation service if the transportation system was not operated by the State or political subdivision prior to 1951 and, at the time of its first acquisition (after 1950) from private ownership of any part of its transportation system, the State or political subdivision did not have a general retirement system covering substantially all service performed in connection with the operation of the transportation system.

(4) For the purposes of this subsection—

(A) The term “general retirement system” means any pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof for employees of the State, political subdivision, or both; but such term shall not include such a fund or system which covers only service performed in positions connected with the operation of its public transportation system.

(B) A transportation system or a part thereof shall be considered to have been acquired by a State or political subdivision from private ownership if prior to the acquisition service performed by employees in connection with the operation of the system or part thereof acquired constituted employment under this title, and some of such employees become employees of the State or political subdivision in connection with and at the time of such acquisition.

(C) The term “political subdivision” includes an instrumentality of (i) a State, (ii) one or more political subdivisions of a State, or (iii) a State and one or more of its political subdivisions.

#### Service in the Uniformed Services

(1)(1) Except as provided in paragraph (4), the term “employment” shall, notwithstanding the provisions of subsection (a) of this section, include service performed after December 1956 by an individual as a member of a uniformed service on active duty; but such term shall not include any such service which is performed while on leave without pay.

(2) The term “active duty” means “active duty” as described in section 102 of the Servicemen’s and Veterans’ Survivor Benefits Act, except that it shall also include “active duty for training” as described in such section.

(3) The term “inactive duty training” means “inactive duty training” as described in such section 102.

(4)(A) Paragraph (1) of this subsection shall not apply in the case of any service, performed by an individual as a member of a uniformed service, which is creditable under section 4 of the Railroad Retirement Act of 1937. The Railroad Retirement Board shall notify the Secretary of Health, Education, and Welfare, as provided in section 4(p)(2) of that Act, with respect to all such service which is so creditable.

(B) In any case where benefits under this title are already payable on the basis of such individual’s wages and self-employment income

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at the time such notification (with respect to such individual) is received by the Secretary, the Secretary shall certify no further benefits for payment under this title on the basis of such individual's wages and self-employment income, or shall recompute the amount of any further benefits payable on the basis of such wages and self-employment income, as may be required as a consequence of subparagraph (A) of this paragraph. No payment of a benefit to any person on the basis of such individual's wages and self-employment income, certified by the Secretary prior to the end of the month in which he receives such notification from the Railroad Retirement Board, shall be deemed by reason of this subparagraph to have been an erroneous payment or a payment to which such person was not entitled. The Secretary shall, as soon as possible after the receipt of such notification from the Railroad Retirement Board, advise such Board whether or not any such benefit will be reduced or terminated by reason of subparagraph (A), and if any such benefit will be so reduced or terminated, specify the first month with respect to which such reduction or termination will be effective.

#### Member of a Uniformed Service

(m) The term "member of a uniformed service" means any person appointed, enlisted, or inducted in a component of the Army, Navy, Air Force, Marine Corps, or Coast Guard (including a reserve component of a uniformed service as defined in section 102 (3) of the Servicemen's and Veterans' Survivor Benefits Act) or in one of those services without specification of component, or as a commissioned officer of the Coast and Geodetic Survey or the Regular or Reserve Corps of the Public Health Service, and any person serving in the Army or Air Force under call or conscription. The term includes—

(1) a retired member of any of those services;

(2) a member of the Fleet Reserve or Fleet Marine Corps Reserve;

(3) a cadet at the United States Military Academy, a midshipman at the United States Naval Academy, and a cadet at the United States Coast Guard Academy or United States Air Force Academy;

(4) a member of the Reserve Officers' Training Corps, the Naval Reserve Officers' Training Corps, or the Air Force Reserve Officers' Training Corps, when ordered to annual training duty for fourteen days or more, and while performing authorized travel to and from that duty; and

(5) any person while en route to or from or at, a place for final acceptance or for entry upon active duty in the military or naval service—

(A) who has been provisionally accepted for such duty; or

(B) who, under the Universal Military Training and Service Act, has been selected for active military or naval service;

and has been ordered or directed to proceed to such place. The term does not include a temporary member of the Coast Guard Reserve.

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### Crew Leader

(n) The term "crew leader" means an individual who furnishes individuals to perform agricultural labor for another person, if such individual pays (either on his own behalf or on behalf of such person) the individuals so furnished by him for the agricultural labor performed by them and if such individual has not entered into a written agreement with such person whereby such individual has been designated as an employee of such person; and such individuals furnished by the crew leader to perform agricultural labor for another person shall be deemed to be the employees of such crew leader. A crew leader shall, with respect to services performed in furnishing individuals to perform agricultural labor for another person and service performed as a member of the crew, be deemed not to be an employee of such other person.

### Peace Corps Volunteer Service

(o) The term "employment" shall, notwithstanding the provisions of subsection (a), include service performed by an individual as a volunteer or volunteer leader within the meaning of the Peace Corps Act.

### Self-Employment

Sec. 211. For the purposes of this title—

#### Net Earnings From Self-Employment

(a) The term "net earnings from self-employment" means the gross income, as computed under Subtitle A of the Internal Revenue Code of 1954, derived by an individual from any trade or business carried on by such individual, less the deductions allowed under such subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of income or loss described in section 702(a)(9) of the Internal Revenue Code of 1954, from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary income or loss—

(1) There shall be excluded rentals from real estate and from personal property leased with the real estate (including such rentals paid in crop shares), together with the deductions attributable thereto, unless such rentals are received in the course of a trade or business as a real estate dealer; except that the preceding provisions of this paragraph shall not apply to any income derived by the owner or tenant of land if (A) such income is derived under an arrangement, between the owner or tenant and another individual, which provides that such other individual shall produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land, and that there shall be material participation by the owner or tenant in the production or the management of the production of such agricultural or horticultural commodities, and (B) there is material participation by the owner or tenant with respect to any such agricultural or horticultural commodity;

(2) There shall be excluded dividends on any share of stock, and interest on any bond, debenture, note, or certificate, or other

evidence of indebtedness, issued with interest coupons or in registered form by any corporation (including one issued by a government or political subdivision thereof), unless such dividends and interest (other than interest described in section 35 of the Internal Revenue Code of 1954) are received in the course of a trade or business as a dealer in stocks or securities;

(3) There shall be excluded any gain or loss (A) which is considered under Subtitle A of the Internal Revenue Code of 1954 as gain or loss from the sale or exchange of a capital asset, (B) from the cutting of timber or the disposal of timber, coal, or iron ore, if section 631 of the Internal Revenue Code of 1954 applies to such gain or loss, or (C) from the sale, exchange, involuntary conversion, or other disposition of property if such property is neither (i) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, nor (ii) property held primarily for sale to customers in the ordinary course of the trade or business;

(4) The deduction for net operating losses provided in section 172 of such Code shall not be allowed;

(5)(A) If any of the income derived from a trade or business (other than a trade or business carried on by a partnership) is community income under community property laws applicable to such income, all of the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the husband unless the wife exercises substantially all of the management and control of such trade or business, in which case all of such gross income and deductions shall be treated as the gross income and deductions of the wife;

(B) If any portion of a partner's distributive share of the ordinary net income or loss from a trade or business carried on by a partnership is community income or loss under the community property laws applicable to such share, all of such distributive share shall be included in computing the net earnings from self-employment of such partner, and no part of such share shall be taken into account in computing the net earnings from self-employment of the spouse of such partner;

(6) A resident of the Commonwealth of Puerto Rico shall compute his net earnings from self-employment in the same manner as a citizen of the United States but without regard to the provisions of section 933 of the Internal Revenue Code of 1954;

(7) An individual who is a duly ordained, commissioned, or licensed minister of a church or a member of a religious order shall compute his net earnings from self-employment derived from the performance of service described in subsection (c)(4) without regard to section 107 (relating to rental value of parsonages) and section 119 (relating to meals and lodging furnished for the convenience of the employer) of the Internal Revenue Code of 1954 and, in addition, if he is a citizen of the United States performing such service as an employee of an American employer (as defined in section 210(e)) or as a minister in a foreign country who has a congregation which is composed predominantly of citizens of the United States, without regard to section 911 (relating to earned income from sources without the United States) and section 931 (relating to income from sources within possessions of the United States) of such Code;

(8) The term "possession of the United States" as used in sections 931 (relating to income from sources within possessions of the United States) and 932 (relating to citizens of possessions of the United States) of the Internal Revenue Code of 1954 shall be deemed not to include the Virgin Islands, Guam, or American Samoa; [and]

(9) There shall be excluded amounts received by a partner pursuant to a written plan of the partnership, which meets such requirements as are prescribed by the Secretary of the Treasury or his delegate, and which provides for payments on account of retirement, on a periodic basis, to partners generally or to a class or classes of partners, such payments to continue at least until such partner's death, if—

(A) such partner rendered no services with respect to any trade or business carried on by such partnership (or its successors) during the taxable year of such partnership (or its successors), ending within or with his taxable year, in which such amounts were received, and

(B) no obligation exists (as of the close of the partnership's taxable year referred to in subparagraph (A)) from the other partners to such partner except with respect to retirement payments under such plan, and

(C) such partner's share, if any of the capital of the partnership has been paid to him in full before the close of the partnership's taxable year referred to in subparagraph (A); and

(10) *In the case of an individual who has been a resident of the United States during the entire taxable year, the exclusion from gross income provided by section 911(a)(2) of the Internal Revenue Code of 1954 shall not apply.*<sup>1</sup>

If the taxable year of a partner is different from that of the partnership, the distributive share which he is required to include in computing his net earnings from self-employment shall be based upon the ordinary net income or loss of the partnership for any taxable year of the partnership (even though beginning prior to 1951) ending within or with his taxable year. In the case of any trade or business which is carried on by an individual or by a partnership and in which, if such trade or business were carried on exclusively by employees, the major portion of the services would constitute agricultural labor as defined in section 210(f)—

(i) in the case of an individual, if the gross income derived by him from such trade or business is not more than \$2,400, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be 66% percent of such gross income; or

(ii) in the case of an individual, if the gross income derived by him from such trade or business is more than \$2,400 and the net earnings from self-employment derived by him from such trade or business (computed under this subsection without regard to this sentence) are less than \$1,600, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be \$1,600; and

(iii) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from

<sup>1</sup> Applies with respect to taxable years beginning after Dec. 31, 1971.



such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) of the Internal Revenue Code of 1954 applies) is not more than \$2,400; his distributive share of income described in section 702(a)(9) of such Code derived from such trade or business may, at his option be deemed to be an amount equal to 66 $\frac{2}{3}$  percent of his distributive share of such gross income (after such gross income has been so reduced); or

(iv) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) of the Internal Revenue Code of 1954 applies) is more than \$2,400 and his distributive share (whether or not distributed) of income described in section 702(a)(9) of such Code derived from such trade or business (computed under this subsection without regard to this sentence) is less than \$1,600, his distributive share of income described in such section 702(a)(9) derived from such trade or business may, at his option, be deemed to be \$1,600.

For purposes of the preceding sentence, gross income means—

(v) in the case of any such trade or business in which the income is computed under a cash receipts and disbursements method, the gross receipts from such trade or business reduced by the cost or other basis of property which was purchased and sold in carrying on such trade or business, adjusted (after such reduction) in accordance with the provisions of paragraphs (1) through (6) and paragraph (8) of this subsection; and

(vi) in the case of any such trade or business in which the income is computed under an accrual method, the gross income from such trade or business, adjusted in accordance with the provisions of paragraphs (1) through (6) and paragraph (8) of this subsection;

and, for purposes of such sentence, if an individual (including a member of a partnership) derives gross income from more than one such trade or business, such gross income (including his distributive share of the gross income of any partnership derived from any such trade or business) shall be deemed to have been derived from one trade or business.

*The preceding sentence and clauses (i) through (iv) of the second preceding sentence shall also apply in the case of any trade or business (other than a trade or business specified in such second preceding sentence) which is carried on by an individual who is self-employed on a regular basis as defined in subsection (g), or by a partnership of which an individual is a member on a regular basis as defined in subsection (g), but only if such individual's net earnings from self-employment in the taxable year (not counting any net earnings derived from a trade or business specified in such second preceding sentence) as determined without regard to this sentence are less than \$1,600 and less than 66 $\frac{2}{3}$  percent of the sum (in such taxable year) of such individual's gross income derived from all the trades or businesses carried on by him to which this sentence refers and his distributive share of the income or loss from such trades or businesses carried on by all the partnerships of which he is a member; except that this sentence shall not apply to more than 5 taxable years in the case of any individual, and in no case in which an individual elects to determine the amount of his net earnings from self-employment for a taxable*

*year under the provisions of the two preceding sentences with respect to a trade or business to which the second preceding sentence applies and with respect to a trade or business to which this sentence applies shall such net earnings for such year exceed \$1,600.<sup>1</sup>*

#### Self-Employment Income

(b) The term "self-employment income" means the net earnings from self-employment derived by an individual (other than a non-resident alien individual) during any taxable year beginning after 1950; except that such term shall not include—

(1) That part of the net earnings from self-employment which is in excess of—

(A) For any taxable year ending prior to 1955, (i) \$3,600, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(B) For any taxable year ending after 1954 and prior to 1959, (i) \$4,200, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(C) For any taxable year ending after 1958 and prior to 1966, (i) \$4,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(D) For any taxable year ending after 1965 and prior to 1968, (i) \$6,600, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(E) For any taxable year ending after 1967 and beginning prior to 1972, (i) \$7,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(F) For any taxable year beginning after 1971 and prior to 1973, (i) ~~[\$9,000]~~ \$10,200,<sup>1</sup> minus (ii) the amount of the wages paid to such individual during the taxable year; ~~[or] and~~

(G) *For any taxable year beginning in any calendar year after 1972, (i) an amount equal to the contribution and benefit base (as determined under section 230) which is effective for such calendar year, minus (ii) the amount of the wages paid to such individual during such taxable year; or*<sup>1</sup>

(2) The net earnings from self-employment, if such net earnings for the taxable year are less than \$400.

An individual who is not a citizen of the United States but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa shall not, for the purposes of this subsection, be considered to be a nonresident alien individual.

#### Trade or Business

(c) The term "trade or business", when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 162 of the Internal Revenue Code of 1954, except that such terms shall not include—

(1) The performance of the functions of a public office, other than the functions of a public office of a State or a political sub-

<sup>1</sup> Applies with respect to taxable years beginning after Dec. 31, 1971.

division thereof with respect to fees received in any period in which the functions are performed in a position compensated solely on a fee basis and in which such functions are not covered under an agreement entered into by such State and the Secretary pursuant to section 218;

(2) The performance of service by an individual as an employee other than—

(A) service described in section 210(a)(14)(B) performed by an individual who has attained the age of eighteen,

(B) service described in section 210(a)(16),

(C) service described in section 210(a)(11), (12), or (15) performed in the United States by a citizen of the United States,

(D) service described in paragraph (4) of this subsection, and

(E) service performed by an individual as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis with respect to fees received in any period in which such service is not covered under an agreement entered into by such State and the Secretary pursuant to section 218;

(3) The performance of service by an individual as an employee or employee representative as defined in section 3231 of the Internal Revenue Code of 1954;

(4) The performance of service by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(5) The performance of service by an individual in the exercise of his profession as a Christian Science practitioner; or

(6) The performance of service by an individual during the period for which an exemption under section 1402(h) of the Internal Revenue Code of 1954 is effective with respect to him.

The provisions of paragraph (4) or (5) shall not apply to service (other than service performed by a member of a religious order who has taken a vow of poverty as a member of such order) performed by an individual unless an exemption under section 1402(e) of the Internal Revenue Code of 1954 is effective with respect to him.

#### Partnership and Partner

(d) The term "partnership" and the term "partner" shall have the same meaning as when used in subchapter K of chapter 1 of the Internal Revenue Code of 1954.

#### Taxable Year

(e) The term "taxable year" shall have the same meaning as when used in subtitle A of the Internal Revenue Code of 1954; and the taxable year of any individual shall be a calendar year unless he has a different taxable year for the purposes of subtitle A of such Code, in which case his taxable year for the purposes of this title shall be the same as his taxable year under such subtitle A.

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### Partner's Taxable Year Ending as Result of Death

(f) In computing a partner's net earnings from self-employment for his taxable year which ends as a result of his death (but only if such taxable year ends within, and not with, the taxable year of the partnership), there shall be included so much of the deceased partner's distributive share of the partnership's ordinary income or loss for the partnership taxable year as is not attributable to an interest in the partnership during any period beginning on or after the first day of the first calendar month following the month in which such partner died. For purposes of this subsection—

(1) in determining the portion of the distributive share which is attributable to any period specified in the preceding sentence, the ordinary income or loss of the partnership shall be treated as having been realized or sustained ratably over the partnership taxable year; and

(2) the term "deceased partner's distributive share" includes the share of his estate or of any other person succeeding, by reason of his death, to rights with respect to his partnership interest.

#### Regular Basis

(g) *An individual shall be deemed to be self-employed on a regular basis in a taxable year, or to be a member of a partnership on a regular basis in such year, if he had net earnings from self-employment, as defined in the first sentence of subsection (a), of not less than \$400 in at least two of the three consecutive taxable years immediately preceding such taxable year from trades or businesses carried on by such individual or such partnership.<sup>1</sup>*

### Crediting of Self-Employment Income to Calendar Quarters

**Sec. 212.** For the purposes of determining average monthly wage and quarters of coverage the amount of self-employment income derived during any taxable year shall be credited to calendar quarters as follows:

(a) In the case of a taxable year which is a calendar year the self-employment income of such taxable year shall be credited equally to each quarter of such calendar year.

(b) In the case of any other taxable year the self-employment income shall be credited equally to the calendar quarter in which such taxable year ends and to each of the next three or fewer preceding quarters any part of which is in such taxable year.

### Quarter and Quarter of Coverage

#### Definitions

**Sec. 213.** (a) For the purposes of this title—

(1) The term "quarter", and the term "calendar quarter", means a period of three calendar months ending on March 31, June 30, September 30, or December 31.

(2) The term "quarter of coverage" means a quarter in which the individual has been paid \$50 or more in wages (except wages

<sup>1</sup> Applies with respect to taxable years beginning after Dec. 31, 1971.

for agricultural labor paid after 1954) or for which he has been credited (as determined under section 212) with \$100 or more of self-employment income, except that—

(i) no quarter after the quarter in which such individual died shall be a quarter of coverage, and no quarter any part of which was included in a period of disability (other than the initial quarter and the last quarter of such period) shall be a quarter of coverage;

(ii) if the wages paid to any individual in any calendar year equal \$3,000 in the case of a calendar year before 1951, or \$3,600 in the case of a calendar year after 1950 and before 1955, or \$4,200 in the case of a calendar year after 1954 and before 1959, or \$4,800 in the case of a calendar year after 1958 and before 1966, or \$6,600 in the case of a calendar year after 1965 and before 1968, or \$7,800 in the case of a calendar year after 1967 and before 1972, or **[\$9,000]** \$10,200 in the case of a calendar year after 1971 *and before 1973*, or *an amount equal to the contribution and benefit base (as determined under section 230) in the case of any calendar year after 1972 with respect to which such contribution and benefit base is effective,*<sup>1</sup> each quarter of such year shall (subject to clause (i)) be a quarter of coverage;

(iii) if an individual has self-employment income for a taxable year, and if the sum of such income and the wages paid to him during such year equals \$3,600 in the case of a taxable year beginning after 1950 and ending before 1955, or \$4,200 in the case of a taxable year ending after 1954 and before 1959, or \$4,800 in the case of a taxable year ending after 1958 and before 1966, or \$6,600 in the case of a taxable year after 1965 and before 1968, or \$7,800 in the case of a taxable year ending after 1967, or **[\$9,000]** \$10,200 in the case of a taxable year beginning after 1971 *and before 1973*, or *an amount equal to the contribution and benefit base (as determined under section 230) which is effective for the calendar year in the case of any taxable year beginning in any calendar year after 1972,*<sup>1</sup> each quarter any part of which falls in such year shall (subject to clause (i)) be a quarter of coverage;

(iv) if an individual is paid wages for agricultural labor in a calendar year after 1954, then, subject to clause (i), (a) the last quarter of such year which can be but is not otherwise a quarter of coverage shall be a quarter of coverage if such wages equal or exceed \$100 but are less than \$200; (b) the last two quarters of such year which can be but are not otherwise quarters of coverage shall be quarters of coverage if such wages equal or exceed \$200 but are less than \$300; (c) the last three quarters of such year which can be but are not otherwise quarters of coverage shall be quarters of coverage if such wages equal or exceed \$300 but are less than \$400; and (d) each quarter of such year which is not otherwise a quarter of coverage shall be a quarter of coverage if such wages are \$400 or more; and

(v) no quarter shall be counted as a quarter of coverage prior to the beginning of such quarter.

<sup>1</sup>Applies with respect to remuneration paid after December 1971.

If in the case of any individual who has attained age 62 or died or is under a disability and who has been paid wages for agricultural labor in a calendar year after 1954, the requirements for insured status in subsection (a) or (b) of section 214, the requirements for entitlement to a computation or recomputation of his primary insurance amount, or the requirements of paragraph (3) of section 216(i) are not met after assignment of quarters of coverage to quarters in such year as provided in clause (iv) of the preceding sentence, but would be met if such quarters of coverage were assigned to different quarters in such year, then such quarters of coverage shall instead be assigned, for purposes only of determining compliance with such requirements, to such different quarters. If, in the case of an individual who did not die prior to January 1, 1955, and who attained age 62 (if a woman) or age 65 (if a man) or died before July 1, 1957, the requirements for insured status in section 214(a)(3) are not met because of his having too few quarters of coverage but would be met if his quarters of coverage in the first calendar year in which he had any covered employment had been determined on the basis of the period during which wages were earned rather than on the basis of the period during which wages were paid (any such wages paid that are reallocated on an earned basis shall not be used in determining quarters of coverage for subsequent calendar years), then upon application filed by the individual or his survivors and satisfactory proof of his record of wages earned being furnished by such individual or his survivors, the quarters of coverage in such calendar year may be determined on the basis of the periods during which wages were earned.

#### **Crediting of Wages Paid in 1937**

(b) With respect to wages paid to an individual in the six-month periods commencing either January 1, 1937, or July 1, 1937; (A) if wages of not less than \$100 were paid in any such period, one-half of the total amount thereof shall be deemed to have been paid in each of the calendar quarters in such period; and (B) if wages of less than \$100 were paid in any such period, the total amount thereof shall be deemed to have been paid in the latter quarter of such period, except that if in any such period, the individual attained age sixty-five, all of the wages paid in such period shall be deemed to have been paid before such age was attained.

#### **Alternative Method for Determining Quarters of Coverage With Respect to Wages in the Period From 1937 to 1950**

(c) For purposes of section 214(a), an individual shall be deemed to have one quarter of coverage for each \$400 of his total wages prior to 1951 (as defined in section 215(d)(1)(C)), except where—

(1) such individual is not a fully insured individual on the basis of the number of quarters of coverage so derived plus the number of quarters of coverage derived from the wages and self-employment income credited to him for periods after 1950, or

(2) such individual's elapsed years (for purposes of section 214(a)(1)) are less than 7.

## Insured Status for Purposes of Old-Age and Survivors Insurance Benefits

Sec. 214. For the purposes of this title

### Fully Insured Individual

(a) The term "fully insured individual" means any individual who had not less than—

(1) one quarter of coverage (whenever acquired) for each calendar year elapsing after 1950 (or, if later, the year in which he attained age 21) and before

[(A) in the case of a woman, the year in which she died or (if earlier) the year in which she attained age 62,

[(B) in the case of a man who has died, the year in which he died or (if earlier) the year in which he attained age 65, or

[(C) in the case of a man who has not died, the year in which he attained (or would attain) age 65, except]<sup>1</sup>  
*the year in which he died or (if earlier) the year in which he attained age 62, except*<sup>1</sup>

that in no case shall an individual be a fully insured individual unless he has at least 6 quarters of coverage; or

(2) 40 quarters of coverage; or

(3) in the case of an individual who died before 1951, 6 quarters of coverage;

not counting as an elapsed year for purposes of paragraph (1) any year any part of which was included in a period of disability (as defined in section 216(i)).

### Currently Insured Individual

(b) The term "currently insured individual" means any individual who had not less than six quarters of coverage during the thirteen-quarter period ending with (1) the quarter in which he died, (2) the quarter in which he became entitled to old-age insurance benefits, (3) the quarter in which he became entitled to primary insurance benefits under this title as in effect prior to the enactment of this section, or (4) in the case of any individual entitled to disability insurance benefits, the quarter in which he most recently became entitled to disability insurance benefits, not counting as part of such thirteen-quarter period any quarter any part of which was included in a period of disability unless such quarter was a quarter of coverage.

### Computation of Primary Insurance Amount

(Note: Unless otherwise indicated, the amendments to this section apply to benefits for months after May 1972 and to lump-sum death payments for deaths after May 1972.)

Sec. 215. For the purposes of this title—

[(a) Subject to the conditions specified in subsections (b), (c), and (d) of this section, the primary insurance amount of an insured individual shall be whichever of the following is the largest:

(1) The amount in column IV on the line on which in column III of the following table appears his average monthly wage (as determined under subsection (b));

<sup>1</sup> Applies only in the case of a man who attains (or would attain) age 62 after December 1973.

(2) The amount in column IV on the line on which in column II of the following table appears his primary insurance amount (as determined under subsection (c));

(3) The amount in column IV on the line on which in column I of the following table appears his primary insurance benefit (as determined under subsection (d)); or

(4) In the case of an individual who was entitled to a disability insurance benefit for the month before the month in which he died, became entitled to old-age insurance benefits, or attained age 65, the amount in column IV which is equal to the primary insurance amount upon which such disability insurance benefit is based.】

(a) *The primary insurance amount of an insured individual shall be determined as follows:*

(1) *Subject to the conditions specified in subsections (b), (c), and (d) of this section and except as provided in [paragraph (2)] paragraphs (2) and (3)<sup>1</sup> of this subsection and in section 202 (a)(3)<sup>2</sup>, such primary insurance amount shall be whichever of the following amounts is the largest:*

(A) *the amount in column IV of the following table (or, if larger, the amount in column IV of the latest table deemed to be such table under subsection (i)(2)(D))<sup>3</sup> on the line on which in column III of such table appears his average monthly wage (as determined under subsection (b)):*

(B) *the amount in column IV of such table on the line on which in column II appears his primary insurance amount (as determined under subsection (c)); or*

(C) *the amount in column IV of such table on the line on which in column I appears his primary insurance benefit (as determined under subsection (d)).*

(2) *In the case of an individual who was entitled to a disability insurance benefit for the month before the month in which he died, became entitled to old-age insurance benefits, or attained age 65, [such primary insurance amount shall be the amount in column IV of such table which is equal to the primary insurance amount upon which such disability insurance benefit is based; except that if such individual was entitled to a disability insurance benefit under section 223 for the month, before the effective month of a new table and in the following month became entitled to an old-age insurance benefit, or he died in such following month, then his primary insurance amount for such following month shall be the amount in column IV of the new table on the line on which in column II of such table appears his primary insurance amount for the month before the effective month of the table (as determined under subsection (c)) instead of the amount in column IV equal to the primary insurance amount on which his disability insurance benefit is based. For purposes of this paragraph, the term "primary insurance amount" with respect to any individual means only a primary insurance amount determined under paragraph (1) (and such individual's*

<sup>1</sup> Applies to benefits for months after December 1971 and to lump-sum death payments for deaths after December 1971.

<sup>2</sup> Applies to benefits for months after December 1971.

<sup>3</sup> Effective Jan. 1, 1974, section 215(a) is amended by inserting "(or, if larger, the amount in column IV of the latest table deemed to be such table under subsection (i)(2)(D))" after "the following table" in paragraph (1)(A).



benefits shall be deemed to be based upon the primary insurance amount as so determined).<sup>1</sup>

such primary insurance amount shall be—

(A) the amount in column IV of such table which is equal to the primary insurance amount upon which such disability insurance benefit is based; except that if such individual was entitled to a disability insurance benefit under section 223 for the month before the effective month of a new table (whether enacted by another law or deemed to be such table under subsection (i)(2)(D))<sup>2</sup> and in the following month became entitled to an old-age insurance benefit, or he died in such following month, then his primary insurance amount for such following month shall be the amount in column IV of the new table on the line on which in column II of such table appears his primary insurance amount for the month before the effective month of the table (as determined under subsection (c)) instead of the amount in column IV equal to the primary insurance amount on which his disability insurance benefit is based. For purposes of this paragraph, the term "primary insurance amount" with respect to any individual means only a primary insurance amount determined under paragraph (1) (and such individual's benefits shall be deemed to be based upon the primary insurance amount as so determined);

(B) an amount equal to the primary insurance amount upon which such disability insurance benefit is based if such primary insurance amount was determined under paragraph (3); or,<sup>1</sup>

(C) an amount equal to the primary insurance amount on which such disability insurance benefit is based if such primary insurance amount was determined under section 202(a)(3).<sup>3</sup>

(3) Such primary insurance amount shall be an amount equal to \$5 multiplied by the individual's years of coverage in any case in which such amount is higher than the individual's primary insurance amount as determined under paragraph (1) or (2).

For purposes of paragraph (3), an individual's "years of coverage" is the number (not exceeding 30) equal to the sum of (i) the number (not exceeding 14 and disregarding any fraction) determined by dividing the total of the wages credited to him for years after 1936 and before 1951 by \$900, plus (ii) the number equal to the number of years after 1950 each of which is a computation base year (within the meaning of subsection (b)(2)(C)) and in each of which he is credited with wages and self-employment income of not less than 25 percent of the maximum amount which, pursuant to subsection (e), may be counted for such year.

<sup>1</sup> Applies to benefits for months after December 1971 and to lump-sum death payments for deaths after December 1971.

<sup>2</sup> Effective Jan. 1, 1974.

<sup>3</sup> Applies to benefits for months after December 1971.

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TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS

I (Primary insurance benefit under 1939 Act, as modified)		II (Primary insurance amount under 1969 Act)	III (Average monthly wage)		IV (Primary insurance amount)	V (Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—		Or his primary insurance amount (as determined under subsec. (c)) is—	Or his average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of his wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
-----	\$16. 20	\$64. 00 or less	-----	\$76	\$70. 40	\$105. 60
\$16. 21	16. 84	65. 00	\$77	78	71. 50	107. 30
16. 85	17. 60	66. 40	79	80	73. 10	109. 70
17. 61	18. 40	67. 70	81	81	74. 50	111. 80
18. 41	19. 24	68. 90	82	83	75. 80	113. 70
19. 25	20. 00	70. 30	84	85	77. 40	116. 10
20. 01	20. 64	71. 60	86	87	78. 80	118. 20
20. 65	21. 28	72. 80	88	89	80. 10	120. 20
21. 29	21. 88	74. 20	90	90	81. 70	122. 60
21. 89	22. 28	75. 50	91	92	83. 10	124. 70
22. 29	22. 68	76. 80	93	94	84. 50	126. 80
22. 69	23. 08	78. 00	95	96	85. 80	128. 70
23. 09	23. 44	79. 40	97	97	87. 40	131. 10
23. 45	23. 78	80. 80	98	99	88. 90	133. 40
23. 77	24. 20	82. 30	100	101	90. 60	135. 90
24. 21	24. 60	83. 50	102	102	91. 90	137. 90
24. 61	25. 00	84. 90	103	104	93. 40	140. 10
25. 01	25. 48	86. 40	105	106	95. 10	142. 70
25. 49	25. 92	87. 80	107	107	96. 60	144. 90
25. 93	26. 40	89. 20	108	109	98. 20	147. 30
26. 41	26. 94	90. 60	110	113	99. 70	149. 60
26. 95	27. 46	91. 90	114	118	101. 10	151. 70
27. 47	28. 00	93. 30	119	122	102. 70	154. 10
28. 01	28. 68	94. 70	123	127	104. 20	156. 30
28. 69	29. 25	96. 20	128	132	105. 90	158. 90
29. 26	29. 68	97. 50	133	136	107. 30	161. 00
29. 69	30. 36	98. 80	137	141	108. 70	163. 10
30. 37	30. 92	100. 30	142	146	110. 40	165. 60
30. 93	31. 36	101. 70	147	150	111. 90	167. 90
31. 37	32. 00	103. 00	151	155	113. 30	170. 00
32. 01	32. 60	104. 50	156	160	115. 00	172. 50
32. 61	33. 20	105. 80	161	164	116. 40	174. 60
33. 21	33. 88	107. 20	165	169	118. 00	177. 00
33. 89	34. 50	108. 60	170	174	119. 50	179. 30
34. 51	35. 00	110. 00	175	178	121. 00	181. 50
35. 01	35. 80	111. 40	179	183	122. 60	183. 90
35. 81	36. 40	112. 70	184	188	124. 00	186. 00
36. 41	37. 08	114. 20	189	193	125. 70	188. 60
37. 09	37. 60	115. 60	194	197	127. 20	190. 80
37. 61	38. 20	116. 90	198	202	128. 60	192. 90
38. 21	39. 12	118. 40	203	207	130. 30	195. 50
39. 13	39. 68	119. 80	208	211	131. 80	197. 70
39. 69	40. 38	121. 00	212	216	133. 10	199. 70
40. 34	41. 12	122. 50	217	221	134. 80	202. 20
41. 13	41. 76	123. 90	222	225	136. 30	204. 50
41. 77	42. 44	125. 30	226	230	137. 90	206. 90
42. 45	43. 20	126. 80	231	235	139. 40	209. 10
43. 21	43. 76	128. 20	236	239	141. 10	211. 70
43. 77	44. 44	129. 50	240	244	142. 50	214. 80
44. 45	44. 88	130. 80	245	249	143. 90	219. 20
44. 89	45. 60	132. 30	250	253	145. 60	222. 70
		133. 70	254	258	147. 10	227. 10
		134. 90	259	263	148. 40	231. 50
		136. 40	264	267	150. 10	235. 00
		137. 80	268	272	151. 60	239. 40
		139. 20	273	277	153. 20	243. 80
		140. 60	278	281	154. 70	247. 30
		142. 00	282	286	156. 20	251. 70
		143. 50	287	291	157. 90	256. 10
		144. 70	292	295	159. 20	259. 60

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS—Continued

I (Primary insurance benefit under 1939 Act, as modified)		II (Primary insurance amount under 1969 Act)	III (Average monthly wage)		IV (Primary insurance amount)	V (Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—		Or his primary insurance amount (as determined under subsec. (c)) is—	Or his average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of his wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
		\$146.20	\$296	\$300	\$160.90	\$264.00
		147.60	301	305	162.40	268.40
		148.90	306	309	163.80	272.00
		150.40	310	314	165.50	276.40
		151.70	315	319	166.90	280.80
		153.00	320	323	168.30	284.30
		154.50	324	328	170.00	288.70
		155.90	329	333	171.50	293.10
		157.40	334	337	173.20	296.60
		158.60	338	342	174.50	301.00
		160.00	343	347	176.00	305.40
		161.50	348	351	177.70	308.90
		162.80	352	356	179.10	313.30
		164.30	357	361	180.80	317.70
		165.00	362	365	182.20	321.20
		166.90	366	370	183.60	325.60
		168.40	371	375	185.30	330.00
		169.80	376	379	186.80	333.60
		171.30	380	384	188.50	338.00
		172.50	385	389	189.80	342.40
		173.90	390	393	191.30	345.90
		175.40	394	398	193.00	350.30
		176.70	399	403	194.40	354.70
		178.20	404	407	196.10	358.20
		179.40	408	412	197.40	362.60
		180.70	413	417	198.80	367.00
		182.00	418	421	200.20	370.50
		183.40	422	426	201.80	374.90
		184.60	427	431	203.10	379.30
		185.90	432	436	204.50	383.70
		187.30	437	440	206.10	388.50
		188.50	441	445	207.40	387.70
		189.80	446	450	208.80	389.90
		191.20	451	454	210.40	391.60
		192.40	455	459	211.70	393.80
		193.70	460	464	213.10	396.00
		195.00	465	468	214.50	397.80
		196.40	469	473	216.10	400.00
		197.60	474	478	217.40	402.20
		198.90	479	482	218.80	404.00
		200.30	483	487	220.40	406.20
		201.50	488	492	221.70	408.40
		202.80	493	496	223.10	410.10
		204.20	497	501	224.70	412.30
		205.40	502	506	226.00	414.50
		206.90	606	609	260.60	459.80
		208.10	610	612	262.00	461.20
		209.20	613	616	263.20	462.90
		210.70	617	620	264.50	464.70
		211.50	621	623	265.70	466.00
		212.70	624	627	267.00	467.80
		213.80	628	630	268.20	469.40
		215.00	631	634	269.50	471.70
		216.10	635	637	270.80	473.90
		217.30	638	641	272.10	476.20
		218.40	642	644	273.30	478.30

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS—Continued

I (Primary insurance benefit under 1939 Act, as modified)		II (Primary insurance amount under 1989 Act)	III (Average monthly wage)		IV (Primary insurance amount)	V (Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—		Or his primary insurance amount (as determined under subsec. (c)) is—	Or his average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec 203(a)) on the basis of his wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
		\$249 60 250 70	\$645 649 653 657 661 666 671 676 681 686 691 696 701 706 711 716 721 726 731 736 741 746 751 756 761 766 771 776 781 786 791 796 801 806 811 816 821 826 831 836 841 846	\$648 652 656 660 665 670 675 680 685 690 695 700 705 710 715 720 725 730 735 740 745 750 755 760 765 770 775 780 785 790 795 800 805 810 815 820 825 830 835 840 845 850	\$274 60 275 80 276 60 277 40 278 40 279 40 280 40 281 40 282 40 283 40 284 40 285 40 286 40 287 10 288 40 289 40 290 40 291 40 292 40 293 40 294 40 295 40 296 40 297 40 298 40 299 40 300 40 301 40 302 40 303 40 304 40 305 50 306 40 307 40 308 40 309 40 310 40 311 40 312 40 313 40 314 40 315 40	\$180 60 482 70 484 10 485 50 487 20 489 00 490 70 492 50 494 20 496 00 497 70 499 50 501 20 503 00 504 70 506 50 508 20 510 00 511 70 513 50 515 20 517 00 518 70 520 50 522 20 524 00 525 70 527 50 529 20 531 00 532 70 534 50 536 20 538 00 539 70 541 50 543 20 545 00 546 70 548 50 550 20 552 00

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TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS<sup>1</sup>

I <i>(Primary insurance benefit under 1939 Act, as modified)</i>		II <i>(Primary insurance amount effective for January 1971)</i>	III <i>(Average monthly wage)</i>		IV <i>(Primary insurance amount)</i>	V <i>(Maximum family benefits)</i>
<i>If an individual's primary insurance benefit (as determined under subsec. (d)) is—</i>		<i>Or his primary insurance amount (as determined under subsec. (c)) is—</i>	<i>Or his average monthly wage (as determined under subsec. (b)) is—</i>		<i>The amount referred to in the preceding paragraphs of this subsection shall be—</i>	<i>And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of his wages and self-employment income shall be—</i>
<i>At least—</i>	<i>But not more than—</i>		<i>At least—</i>	<i>But not more than—</i>		
-----	\$16.20	\$70.40	-----	\$76	\$74.00	\$111.00
16.21	16.24	71.50	77	78	75 10	112.70
16.25	17.60	73.10	79	80	76 80	115.20
17.61	18.40	74.50	81	81	78 30	117.50
18.41	19.24	75.80	82	83	79 60	119.40
19.25	20.00	77.40	84	85	81 30	122.00
20.01	20.64	78.80	86	87	82 80	124.20
20.65	21.28	80.10	88	89	84 20	126.30
21.29	21.88	81.70	90	90	85 80	128.80
21.89	22.28	83.10	91	92	87 30	131.00
22.29	22.68	84.50	93	94	88 80	133.20
22.69	23.08	85.80	95	96	90 10	135.20
23.09	23.44	87.40	97	97	91.80	137.70
23.45	23.78	88.90	98	99	93.40	140.10
23.77	24.20	90.60	100	101	95.20	142.80
24.21	24.60	91.90	102	102	96 50	144.80
24.61	25.00	93.40	103	104	98 10	147.20
25.01	25.48	95.10	105	105	99 90	149 90
25.49	25.92	96 60	107	107	101 50	152 30
25.93	26.40	98.20	108	109	103 20	154 80
26.41	26.94	99.70	110	113	104 70	157.10
26.95	27.48	101.10	114	118	106 20	159 30
27.47	28.00	102.70	119	122	107 90	161.90
28.01	28.68	104.20	123	127	109 50	164.30
28.69	29.25	105.90	128	132	111 20	166.90
29.26	29.68	107 30	133	136	112 70	169.10
29.69	30.38	108.70	137	141	114 20	171.30
30.37	30.92	110.40	142	146	116 00	174.00
30.93	31.36	111.90	147	150	117 50	176.30
31.37	32.00	113.30	151	155	119 00	178.50
32.01	32 60	115.00	156	160	120 80	181.20
32.61	33.20	116.40	161	164	122 30	183.50
33.21	33.88	118.00	165	169	123 90	185 90
33.89	34.50	119 50	170	174	125 50	188 30
34.51	35.00	121.00	175	178	127 10	190 70
35.01	35.80	122.60	179	183	128 80	193.20
35.81	36.40	124 00	184	188	130 20	195 30
36.41	37.08	125.70	189	193	132 00	198 10
37.09	37.60	127.20	194	197	133 60	200.40
37.61	38.20	128.60	198	202	135 10	202.70
38.21	39.12	130.30	203	207	136 90	205.40
39.13	39.68	131.80	208	211	138 40	207.60
39.69	40.33	133.10	212	216	139 80	209 70
40.34	41.12	134.80	217	221	141.60	212 40
41.13	41.76	136 30	222	225	143.20	214 80
41.77	42.44	137.90	226	230	144.80	217 30
42.45	43.80	139 40	231	235	146 40	219 60
43.21	43.76	141.10	236	239	148 20	222 30
43.77	44.44	142 50	240	244	149 70	225 60
44.45	44.88	143.90	245	249	151 10	230 20
44.89	45.60	145.60	250	253	152 90	233.90
	147.10		254	258	154 50	238.50
	148.40		259	263	155 90	243.10
	150.10		264	267	157.70	246.80
	151.60		268	272	159.20	251.40
	153 20		273	277	160 90	256.00
	154.70		278	281	162.50	259.70
	156.20		282	286	164.10	264.30
	157.90		287	291	165.30	269 00
	159.20		292	295	167.20	272 60
	160.90		296	300	169.00	277 20
	162.40		301	305	170.60	281.90
	163.80		306	309	172.00	285.60

See footnote at end of table, p. 115.

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS<sup>1</sup>—Continued

I (Primary insurance benefit under 1939 Act, as modified)		II (Primary insurance amount effective for January 1971)	III (Average monthly wage)		IV (Primary insurance amount)	V (Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—		Or his primary insurance amount (as determined under subsec. (c)) is—	Or his average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of his wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
		\$165.60	\$310	\$314	\$175.80	\$290.30
		166.90	315	319	176.30	294.90
		168.30	320	323	176.80	298.60
		170.00	324	328	178.60	303.80
		171.60	329	333	180.10	307.80
		173.20	334	337	181.90	311.60
		174.60	338	342	183.30	316.10
		176.00	343	347	184.80	320.70
		177.70	348	351	186.60	324.40
		179.10	352	356	188.10	329.00
		180.80	357	361	189.90	333.60
		182.20	362	365	191.40	337.90
		183.60	366	370	192.80	341.90
		185.30	371	375	194.60	346.60
		186.80	376	379	196.20	350.30
		188.60	380	384	198.00	354.90
		189.80	385	389	199.30	359.60
		191.30	390	393	200.90	363.20
		193.00	394	398	202.70	367.90
		194.40	399	403	204.20	372.60
		196.10	404	407	206.00	376.20
		197.40	408	412	207.30	380.80
		198.80	413	417	208.80	385.40
		200.20	418	421	210.30	389.10
		201.80	422	426	211.90	393.70
		203.10	427	431	213.30	398.30
		204.60	432	436	214.80	402.90
		206.10	437	440	216.60	404.80
		207.40	441	445	217.80	407.10
		208.80	446	450	219.30	409.40
		210.40	451	454	221.00	411.20
		211.70	455	459	222.30	413.60
		213.10	460	464	223.80	415.80
		214.60	465	468	225.30	417.70
		216.10	469	473	227.00	420.00
		217.40	474	478	228.30	422.40
		218.80	479	482	229.80	424.20
		220.40	483	487	231.60	426.60
		221.70	488	492	232.80	428.90
		223.10	493	496	234.30	430.70
		224.70	497	501	236.00	433.00
		226.00	502	506	237.30	435.30
		227.40	507	510	238.80	437.20
		228.80	511	515	240.30	439.60
		230.30	516	520	241.90	441.80
		231.70	521	524	243.30	443.60
		233.10	525	529	244.80	445.90
		234.70	530	534	246.50	448.20
		236.00	535	538	247.80	450.10
		237.40	539	543	249.30	452.40
		239.00	544	548	251.00	454.70
		240.30	549	553	252.40	457.00
		241.70	554	558	253.80	458.40
		242.90	557	560	255.10	460.30
		244.20	561	563	256.60	461.60
		246.60	564	567	257.80	463.60
		248.80	568	570	259.20	464.90
		249.00	571	574	260.40	466.70
		249.30	575	577	261.80	468.10
		250.60	578	581	263.10	469.90
		251.80	582	584	264.40	471.30
		253.00	585	588	265.70	472.20
		254.40	589	591	267.20	474.60
		255.60	592	595	268.40	476.40

See footnote at end of table, p. 115.

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TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS<sup>1</sup>—Continued

I <i>(Primary insurance benefit under 1959 Act, as modified)</i>		II <i>(Primary insurance amount effective for January 1971)</i>	III <i>(Average monthly wage)</i>		IV <i>(Primary insurance amount)</i>	V <i>(Maximum family benefits)</i>
<i>If an individual's primary insurance benefit (as determined under subsec. (d)) is—</i>		<i>Or his primary insurance amount (as determined under subsec. (c)) is—</i>	<i>Or his average monthly wage (as determined under subsec. (b)) is—</i>		<i>The amount referred to in the preceding paragraphs of this subsection shall be—</i>	<i>And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of his wages and self-employment income shall be—</i>
<i>At least—</i>	<i>But not more than—</i>		<i>At least—</i>	<i>But not more than—</i>		
		\$256.90	\$596	\$598	\$209.80	\$477.80
		258.10	599	602	271.10	479.70
		259.40	603	605	272.40	481.10
		260.60	606	609	273.70	482.80
		262.00	610	612	275.10	484.30
		263.20	613	616	276.40	486.10
		264.50	617	620	277.80	488.00
		265.70	621	623	279.00	489.50
		267.00	624	627	280.40	491.20
		268.20	628	630	281.70	492.90
		269.50	631	634	283.00	495.30
		270.80	635	637	284.40	497.60
		272.10	638	641	285.80	500.10
		273.30	642	644	287.00	502.30
		274.60	645	648	288.40	504.70
		276.80	649	652	289.60	506.90
		276.60	653	656	290.50	508.40
		277.40	657	660	291.30	509.80
		278.40	661	665	292.40	511.60
		279.40	666	670	293.40	513.50
		280.40	671	675	294.50	515.30
		281.40	672	680	295.50	517.20
		282.40	681	685	296.60	519.00
		283.40	686	690	297.60	520.80
		284.40	691	695	298.70	522.60
		285.40	692	700	299.70	524.50
		286.40	701	705	300.80	526.30
		287.40	706	710	301.80	528.20
		288.40	711	715	302.90	530.00
		289.40	712	720	303.90	531.80
		290.40	721	725	305.00	533.70
		291.40	726	730	306.00	535.60
		292.40	731	735	307.10	537.50
		293.40	732	740	308.10	539.20
		294.40	741	745	309.20	541.00
		295.40	746	750	310.20	542.90
		296.40	751	755	311.30	544.70
		297.40	752	760	312.30	546.60
		298.40	761	765	313.40	548.40
		299.40	766	770	314.40	550.20
		300.40	771	775	315.50	552.00
		301.40	772	780	316.50	553.80
		302.40	781	785	317.60	555.70
		303.40	786	790	318.60	557.60
		304.40	791	795	319.70	559.40
		305.40	796	800	320.70	561.30
		306.40	801	805	321.80	563.10
		307.40	806	810	322.80	564.90
		308.40	811	815	323.90	566.70
		309.40	816	820	324.90	568.60
		310.40	821	825	326.00	570.40
		311.40	826	830	327.00	572.30
		312.40	831	835	328.10	574.10
		313.40	836	840	329.10	576.00
		314.40	841	845	330.20	577.80
		315.40	842	850	331.20	579.60

<sup>1</sup> Applies to benefits for months after May 1972 and to lump-sum death payments for deaths after May 1972.

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## Average Monthly Wage

(b)(1) For the purposes of column III of the table appearing in subsection (a) of this section, an individual's "average monthly wage" shall be the quotient obtained by dividing—

(A) the total of his wages paid in and self-employment income credited to his "benefit computation years" (determined under paragraph (2)), by

(B) the number of months in such years.

(2)(A) The number of an individual's "benefit computation years" shall be equal to the number of elapsed years (determined under paragraph (3) of this subsection), reduced by five, *and further reduced by one additional year for each 15 years of coverage of such individual (as determined under the last sentence of subsection (a) without regard to the 30-year limitation contained therein)*;<sup>1</sup> except that the number of an individual's benefit computation years shall in no case be less than two.

(B) An individual's "benefit computation years" shall be those computation base years, equal in number to the number determined under subparagraph (A), for which the total of his wages and self-employment income is the largest.

(C) For purposes of subparagraph (B), "computation base years" include only calendar years in the period after 1950 and prior to the earlier of the following years—

(i) the year in which occurred (whether by reason of section 202(j)(1) or otherwise) the first month for which the individual was entitled to old-age insurance benefits, or

(ii) the year succeeding the year in which he died.

Any calendar year all of which is included in a period of disability shall not be included as a computation base year.

(3) For purposes of paragraph (2), the number of an individual's elapsed years is the number of calendar years after 1950 (or, if later, the year in which he attained age 21) and [before—

[(A) in the case of a woman, the year in which she died or, if it occurred earlier but after 1960, the year in which she attained age 62,

[(B) in the case of a man who has died, the year in which he died or, if it occurred earlier but after 1960, the year in which he attained age 65, or

[(C) in the case of a man who has not died, the year occurring after 1960 in which he attained (or would attain) age 65.

For] *before the year in which he died or, if it occurred earlier but after 1960, the year in which he attained age 62.*<sup>2</sup> For purposes of the preceding sentence, any calendar year any part of which was included in a period of disability shall not be included in such number of calendar years.

(4) The provisions of this subsection shall be applicable only in the case of an individual—

[(A) who becomes entitled, after [December 1970] *May 1972*, to benefits under section 202(a) or section 223; or

<sup>1</sup> Effective for purposes of computing or recomputing, effective for months after December 1971, the average monthly wage of an insured individual who was born after Jan. 1, 1910, and

(1) who becomes entitled to benefits under section 202(a) or section 223 of such Act after December 1971;

(2) who dies after December 1971; or

(3) who was entitled to benefits under section 223 of such act for December 1971. (Sec. 108(b)).

<sup>2</sup> Applies only in the case of a man who attains (or would attain) age 62 after December 1973.



[(B) who dies after [December 1970] *May 1972* without being entitled to benefits under section 202(a) or section 223; or [(C) whose primary insurance amount is required to be recomputed under subsection (f)(2).] <sup>1</sup>

(A) *who becomes entitled to benefits under section 202(a) or section 223 in or after the month in which a new table that appears in (or is deemed by subsection (i)(2)(D) to appear in) subsection (a) becomes effective; or*

(B) *who dies in or after the month in which such table becomes effective without being entitled to benefits under section 202(a) or section 223; or*

(C) *whose primary insurance amount is required to be recomputed under subsection (f)(2) or (6).*<sup>2</sup>

(5) [Repealed.]

#### **[Primary Insurance Amount Under [1969] Act of March 17, 1971**

[(c)(1) For the purposes of column II of the table appearing in subsection (a) of this section, an individual's primary insurance amount shall be computed on the basis of the law in effect prior to [the amendment of this subsection in March 1971] *June 1972*.

[(2) The provisions of this subsection shall be applicable only in the case of an individual who became entitled to benefits under section 202(a) or section 223 before the date on which this subsection was amended in March 1971 or who died before such month.] <sup>2</sup>

#### ***Primary Insurance Amount Under Prior Provisions***

(c)(1) *For the purposes of column II of the latest table that appears in (or is deemed to appear in) subsection (a) of this section, an individual's primary insurance amount shall be computed on the basis of the law in effect prior to the month in which the latest such table became effective.*

(2) *The provisions of this subsection shall be applicable only in the case of an individual who became entitled to benefits under section 202(a) or section 223, or who died, before such effective month.*<sup>2</sup>

#### **Primary Insurance Benefit Under 1939 Act**

(d)(1) For purposes of column I of the table appearing in subsection (a) of this section, an individual's primary insurance benefit shall be computed as follows:

(A) The individual's average monthly wage shall be determined as provided in subsection (b) (but without regard to paragraph (4) thereof) of this section, except that for purposes of paragraph (2)(C) and (3) of such subsection, 1936 shall be used instead of 1950.

(B) For purposes of subparagraphs (B) and (C) of subsection (b) (2), an individual whose total wages prior to 1951 (as defined in subparagraph (C) of this subsection)—

(i) do not exceed \$27,000 shall be deemed to have been paid such wages in equal parts in nine calendar years after 1936 and prior to 1951;

<sup>1</sup> Applies to benefits for months after May 1972 and to lump-sum death payments for deaths after May 1972.

<sup>2</sup> Effective Jan. 1, 1974.

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(ii) exceed \$27,000 and are less than \$42,000 shall be deemed to have been paid (I) \$3,000 in each of such number of calendar years after 1936 and prior to 1951 as is equal to the integer derived by dividing such total wages by \$3,000, and (II) the excess of such total wages over the product of \$3,000 times such integer, in an additional calendar year in such period; or

(iii) are at least \$42,000 shall be deemed to have been paid \$3,000 in each of the fourteen calendar years after 1936 and prior to 1951.

(C) For the purposes of subparagraph (B), "total wages prior to 1951" with respect to an individual means the sum of (i) remuneration credited to such individual prior to 1951 on the records of the Secretary, (ii) wages deemed paid prior to 1951 to such individual under section 217, and (iii) compensation under the Railroad Retirement Act of 1937 prior to 1951 creditable to him pursuant to this title.

(D) The individual's primary insurance benefit shall be 45.6 per centum of the first \$50 of his average monthly wage as computed under this subsection, plus 11.4 per centum of the next \$200 of such average monthly wage.

(2) The provisions of this subsection shall be applicable only in the case of an individual—

(A) with respect to whom at least one of the quarters elapsing prior to 1951 is a quarter of coverage:

(B) except as provided in paragraph (3), who attained age 22 after 1950 and with respect to whom less than six of the quarters elapsing after 1950 are quarters of coverage, or who attained such age before 1951; and

(C) (i) who becomes entitled to benefits under section 202(a) or 223 after the date of the enactment of the Social Security Amendments of 1967, or

(ii) who dies after such date without being entitled to benefits under section 202(a) or 223, or

(iii) whose primary insurance amount is required to be recomputed under section 215(f)(2) or (6).

(3) The provisions of this subsection as in effect prior to the enactment of the Social Security Amendments of 1967 shall be applicable in the case of an individual—

(A) who attained age 21 after 1936 and prior to 1951, or

(B) who had a period of disability which began prior to 1951, but only if the primary insurance amount resulting therefrom is higher than the primary insurance amount resulting from the application of this section (as amended by the Social Security Amendments of 1967) and section 220.

#### **Certain Wages and Self-Employment Income Not To Be Counted**

(e) For the purposes of subsections (b) and (d)—

(1) in computing an individual's average monthly wage there shall not be counted the excess over \$3,600 in the case of any calendar year after 1950 and before 1955, the excess over \$4,200 in the case of any calendar year after 1954 and before 1959, the

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excess over \$4,800 in the case of any calendar year after 1958 and before 1966, the excess over \$6,600 in the case of any calendar year after 1965 and before 1968, the excess over \$7,800 in the case of any calendar year after 1967 and before 1972, and the excess over ~~[\$9,000]~~ \$10,200 in the case of any calendar year after 1971 and before 1973, and the excess over an amount equal to the contribution and benefit base (as determined under section 230) in the case of any calendar year after 1972 with respect to which such contribution and benefit base is effective <sup>1</sup> of (A) the wages paid to him in such year, plus (B) the self-employment income credited to such year (as determined under section 212); and

(2) if an individual's average monthly wage computed under subsection (b) or for the purposes of subsection (d) is not a multiple of \$1, it shall be reduced to the next lower multiple of \$1.

#### Recomputation of Benefits

(f)(1) After an individual's primary insurance amount has been determined under this section, (or section 202(a)(3)),<sup>2</sup> there shall be no recomputation of such individual's primary insurance amount except as provided in this subsection or, in the case of a World War II veteran who died prior to July 27, 1954, as provided in section 217(b).

(2) If an individual has wages or self-employment income for a year after 1965 for any part of which he is entitled to old-age insurance benefits, the Secretary shall, at such time or times and within such period as he may by regulations prescribe, recompute such individual's primary insurance amount with respect to each such year. Such recomputation shall be made as provided in ~~[subsection (a) (1) and (3) (a)(1) (A) and (C)]~~ subsections (a)(1) (A) and (C) and (a)(3)<sup>3</sup> as though the year with respect to which such recomputation is made is the last year of the period specified in subsection (b)(2)(C), and, in the case of an individual whose primary insurance amount was determined under section 202(a)(3), as though such amount had instead been determined under subsection (a) of this section and without regard to section 202(a)(3).<sup>2</sup> A recomputation under this paragraph with respect to any year shall be effective—

(A) in the case of an individual who did not die in such year, for monthly benefits beginning with benefits for January of the following year; or

~~[(B) in the case of an individual who died in such year (including any individual whose increase in his primary insurance amount is attributable to compensation which, upon his death, is treated as remuneration for employment under section 205(o)), for monthly benefits beginning with benefits for the month in which he died.]~~

~~(B) in the case of an individual who died in such year, for monthly benefits beginning with benefits for the month in which he died.~~

(3) In the case of any individual who became entitled to old-age insurance benefits in 1952 or in a taxable year which began in 1952 (and

<sup>1</sup> Applies with respect to calendar years after 1971.

<sup>2</sup> Applies to benefits for months after December 1971.

<sup>3</sup> Applies to benefits for months after December 1971 and to lump-sum death payments for deaths after December 1971. (Sec. 103(f)).

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without the application of section 202(j)(1)), or who died in 1952 or in a taxable year which began in 1952 but did not become entitled to such benefits prior to 1952, and who had self-employment income for a taxable year which ended within or with 1952 or which began in 1952, then upon application filed by such individual after the close of such taxable year and prior to January 1961 or (if he died without filing such application and such death occurred prior to January 1961) by a person entitled to monthly benefits on the basis of such individual's wages and self-employment income, the Secretary shall recompute such individual's primary insurance amount. Such recomputation shall be made in the manner provided in the preceding subsections of this section (other than subsection (b)(4)(A)) for computation of such amount, except that (A) the self-employment income closing date shall be the day following the quarter with or within which such taxable year ended, and (B) the self-employment income for any subsequent taxable year shall not be taken into account. Such recomputation shall be effective (A) in the case of an application filed by such individual, for and after the first month in which he became entitled to old-age insurance benefits, and (B) in the case of an application filed by any other person, for and after the month in which such person who filed such application for recomputation became entitled to such monthly benefits. No recomputation under this paragraph pursuant to an application filed after such individual's death shall affect the amount of the lump-sum death payment under subsection (i) of section 202, and no such recomputation shall render erroneous any such payment certified by the Secretary prior to the effective date of the recomputation.

(4) Any recomputation under this subsection shall be effective only if such recomputation results in a higher primary insurance amount.

(5) In the case of a man who became entitled to old-age insurance benefits and died before the month in which he attained age 65, the Secretary shall recompute his primary insurance amount as provided in subsection (a) as though he became entitled to old-age insurance benefits in the month in which he died; except that (i) his computation base years referred to in subsection (b)(2) shall include the year in which he died, and (ii) his elapsed years referred to in subsection (b)(3) shall not include the year in which he died or any year thereafter. Such recomputation of such primary insurance amount shall be effective for and after the month in which he died.

(6) *Upon the death after 1967 of an individual entitled to benefits under section 202(a) or section 223, if any person is entitled to monthly benefits or a lump-sum death payment, on the wages and self-employment income of such individual, the Secretary shall recompute the decedent's primary insurance amount, but only if the decedent during his lifetime was paid compensation which was treated under section 205(o) as remuneration for employment.*

#### **Rounding of Benefits**

(g) The amount of any primary insurance amount and the amount of any monthly benefit computed under section 202 or 223 which (after reduction under section 203(a) and deductions under section 203(b)) is not a multiple of \$0.10 shall be raised to the next higher multiple of \$0.10.

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(h)(1) Notwithstanding the provisions of subchapter III of chapter 83 of title 5, United States Code, remuneration paid for services to which the provisions of section 210(l)(1) of this Act are applicable and which is performed by an individual as a commissioned officer of the Reserve Corps of the Public Health Service prior to July 1, 1960, shall not be included in computing entitlement to or the amount of any monthly benefit under this title, on the basis of his wages and self-employment income, for any month after June 1960 and prior to the first month with respect to which the Civil Service Commission certifies to the Secretary that, by reason of a waiver filed as provided in paragraph (2), no further annuity will be paid to him, his wife, and his children, or, if he has died, to his widow and children, under subchapter III of chapter 83 of title 5, United States Code, on the basis of such service.

(2) In the case of a monthly benefit for a month prior to that in which the individual, on whose wages and self-employment income such benefit is based, dies, the waiver must be filed by such individual; and such waiver shall be irrevocable and shall constitute a waiver on behalf of himself, his wife, and his children. If such individual did not file such a waiver before he died, then in the case of a benefit for the month in which he died or any month thereafter, such waiver must be filed by his widow, if any, and by or on behalf of all his children, if any; and such waivers shall be irrevocable. Such a waiver by a child shall be filed by his legal guardian or guardians, or, in the absence thereof, by the person (or persons) who has the child in his care.

#### ***Cost-of-Living Increases in Benefits***

(i)(1) *For purposes of this subsection—*

(A) *the term "base quarter" means (i) the calendar quarter ending on June 30 in each year after 1971, or (ii) any other calendar quarter in which occurs the effective month of a general benefit increase under this title;*

(B) *the term "cost-of-living computation quarter" means a base quarter, as defined in subparagraph (A)(i), in which the Consumer Price Index prepared by the Department of Labor exceeds, by not less than 3 per centum, such Index in the later of (i) the last prior cost-of-living computation quarter which was established under this subparagraph, or (ii) the most recent calendar quarter in which occurred the effective month of a general benefit increase under this title; except that there shall be no cost-of-living computation quarter in any calendar year in which a law has been enacted providing a general benefit increase under this title or in which such a benefit increase becomes effective; and*

(C) *the Consumer Price Index for a base quarter, a cost-of-living computation quarter, or any other calendar quarter shall be the arithmetical mean of such index for the 3 months in such quarter.*

(2)(A)(i) *The Secretary shall determine each year (subject to the limitation in paragraph (1)(B) and to subparagraph (E) of this paragraph) whether the base quarter (as defined in paragraph (1)(A)(i)) in such year is a cost-of-living computation quarter.*

(ii) *If the Secretary determines that such base quarter is a cost-of-living computation quarter, he shall, effective with the month of January of*

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the next calendar year (subject to subparagraph (E)) as provided in subparagraph (B), increase the benefit amount of each individual who for such month is entitled to benefits under section 227 or 228, and the primary insurance amount of each other individual under this title (including a primary insurance amount determined under section 202(a)(3), but not including a primary insurance amount determined under subsection (a)(3) of this section), by an amount derived by multiplying each such amount (including each such individual's primary insurance amount or benefit amount under section 227 or 228 as previously increased under this subparagraph) by the same percentage (rounded to the nearest one-tenth of 1 percent) as the percentage by which the Consumer Price Index for such cost-of-living computation quarter exceeds such index for the most recent prior calendar quarter which was a base quarter under paragraph (1)(A)(ii) or, if later, the most recent cost-of-living computation quarter under paragraph (1)(B). Any such increased amount which is not a multiple of \$0.10 shall be increased to the next higher multiple of \$0.10.

(B) The increase provided by subparagraph (A) with respect to a particular cost-of-living computation quarter shall apply (subject to subparagraph (E)) in the case of monthly benefits under this title for months after December of the calendar year in which occurred such cost-of-living computation quarter, and in the case of lump-sum death payments with respect to deaths occurring after December of such calendar year.

(C)(i) Whenever the level of the Consumer Price Index as published for any month exceeds by 2.5 percent or more the level of such index for the most recent base quarter (as defined in paragraph (1)(A)(ii)) or, if later, the most recent cost-of-living computation quarter, the Secretary shall (within 5 days after such publication) report the amount of such excess to the House Committee on Ways and Means and the Senate Committee on Finance.

(ii) Whenever the Secretary determines that a base quarter in a calendar year is also a cost-of-living computation quarter, he shall notify the House Committee on Ways and Means and the Senate Committee on Finance of such determination on or before August 15 of such calendar year, indicating the amount of the benefit increase to be provided, his estimate of the extent to which the cost of such increase would be met by an increase in the contribution and benefit base under section 230 and the estimated amount of the increase in such base, the actuarial estimates of the effect of such increase, and the actuarial assumptions and methodology used in preparing such estimates.

(D) If the Secretary determines that a base quarter in a calendar year is also a cost-of-living computation quarter, he shall publish in the Federal Register on or before November 1 of such calendar year a determination that a benefit increase is resultantly required and the percentage thereof. He shall also publish in the Federal Register at that time (along with the increased benefit amounts which shall be deemed to be the amounts appearing in sections 227 and 228) a revision of the table of benefits contained in subsection (a) of this section (as it may have been most recently revised by another law or pursuant to this paragraph); and such revised table shall be deemed to be the table appearing in such subsection (a). Such revision shall be determined as follows:

(i) The headings of the table shall be the same as the headings in the table immediately prior to its revision, except that the parenthetical

phrase at the beginning of column II shall reflect the year in which the primary insurance amounts set forth in column IV of the table immediately prior to its revision were effective.

(ii) The amounts on each line of column I and column III, except as otherwise provided by clause (v) of this subparagraph, shall be the same as the amounts appearing in each such column in the table immediately prior to its revision.

(iii) The amount on each line of column II shall be changed to the amount shown on the corresponding line of column IV of the table immediately prior to its revision.

(iv) The amounts on each line of column IV and column V shall be increased from the amounts shown in the table immediately prior to its revision by increasing each such amount by the percentage specified in subparagraph (A) of paragraph (2). The amount on each line of column V shall be increased, if necessary, so that such amount is at least equal to one and one-half times the amount shown on the corresponding line in column IV. Any such increased amount which is not a multiple of \$0.10 shall be increased to the next higher multiple of \$0.10.

(v) If the contribution and benefit base (determined under section 230) for the calendar year in which the table of benefits is revised is lower than such base for the following calendar year, columns III, IV, and V of such table shall be extended. The amounts on each additional line of column III shall be the amounts on the preceding line increased by \$5 until in the last such line of column III the second figure is equal to one-twelfth of the new contribution and benefit base for the calendar year following the calendar year in which such table of benefits is revised. The amount on each additional line of column IV shall be the amount on the preceding line increased by \$1.00, until the amount on the last line of such column is equal to the last line of such column as determined under clause (iv) plus 20 percent of one-twelfth of the excess of the new contribution and benefit base for the calendar year following the calendar year in which such table of benefits is revised (as determined under section 230) over such base for the calendar year in which the table of benefits is revised. The amount on each additional line of column V shall be equal to 1.75 times the amount on the same line of column IV. Any such increased amount which is not a multiple of \$0.10 shall be increased to the next higher multiple of \$0.10.

(E) Notwithstanding a determination by the Secretary under subparagraph (A) that a base quarter in any calendar year is a cost-of-living computation quarter (and notwithstanding any notification or publication thereof under subparagraph (C) or (D)), no increase in benefits shall take effect pursuant thereto, and such quarter shall be deemed not to be a cost-of-living computation quarter, if during the calendar year in which such determination is made a law providing a general benefit increase under this title is enacted or becomes effective.

(3) As used in this subsection, the term "general benefit increase under this title" means an increase (other than an increase under this subsection) in all primary insurance amounts (including those determined under section 202(a)(3), but not including those determined under subsection (a)(3) of this section) on which monthly insurance benefits under this title are based.

### Other Definitions

Sec. 216. For the purposes of this title—

(a) [Repealed.]

#### Wife

(b) The term "wife" means the wife of an individual, but only if she (1) is the mother of his son or daughter, (2) was married to him for a period of not less than one year immediately preceding the day on which her application is filed, or (3) in the month prior to the month of her marriage to him (A) was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (b), (e), or (h) of section 202, (B) had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 202(s)), or (C) was entitled to, or upon application therefor and attainment of the required age (if any) would have been entitled to, a widow's, child's (after attainment of age 18), or parent's insurance annuity under section 5 of the Railroad Retirement Act of 1937, as amended.

#### Widow

(c) The term "widow" (except when used in section 202(i)) means the surviving wife of an individual, but only if (1) she is the mother of his son or daughter, (2) she legally adopted his son or daughter while she was married to him and while such son or daughter was under the age of eighteen, (3) he legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of eighteen, (4) she was married to him at the time both of them legally adopted a child under the age of eighteen, (5) she was married to him for a period of not less than nine months immediately prior to the day on which he died, or (6) in the month prior to the month of her marriage to him (A) she was entitled to, or on application therefore and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (b), (e), or (h) of section 202, (B) she had attained age eighteen and was entitled to, or on application therefore would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 202(s)), or (C) she was entitled to, or upon application therefor and attainment of the required age (if any) would have been entitled to, a widow's, child's (after attainment of age 18), or parent's insurance annuity under section 5 of the Railroad Retirement Act of 1937, as amended.

#### Divorced Wives; Divorce

(d) (1) The term "divorced wife" means a woman divorced from an individual, but only if she had been married to such individual for a period of 20 years immediately before the date the divorce became effective.

(2) The term "surviving divorced wife" means a woman divorced from an individual who has died, but only if she had been married to the individual for a period of 20 years immediately before the date the divorce became effective.



(3) The term "surviving divorced mother" means a woman divorced from an individual who has died, but only if (A) she is the mother of his son or daughter, (B) she legally adopted his son or daughter while she was married to him and while such son or daughter was under the age of 18, (C) he legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of 18, or (D) she was married to him at the time both of them legally adopted a child under the age of 18.

(4) The terms "divorce" and "divorced" refer to a divorce a vinculo matrimonii.

#### Child

(e) The term "child" means (1) the child or legally adopted child of an individual, [and] (2) a stepchild who has been such stepchild for not less than one year immediately preceding the day on which application for child's insurance benefits is filed or (if the insured individual is deceased) not less than nine months immediately preceding the day on which such individual died, and (3) a person who is the grandchild or stepgrandchild of an individual or his spouse, but only if (A) neither of such person's natural or adoptive parents were living at the time (i) such individual became entitled to old-age insurance benefits or disability insurance benefits or died, or (ii) if such individual had a period of disability which continued until such individual became entitled to old-age insurance benefits or disability insurance benefits, or died, at the time such period of disability began, or (B) such person was legally adopted after the death of such individual by such individual's surviving spouse in an adoption that was decreed by a court of competent jurisdiction within the United States and such person's natural or adopting parent or stepparent was not living in such individual's household and making regular contributions toward such person's support at the time such individual died.<sup>1</sup> For purposes of clause (1), a person shall be deemed, as of the date of death of an individual, to be the legally adopted child of such individual if such person was at the time of such individual's death living in such individual's household and was legally adopted by such individual's surviving spouse after such individual's death but only if (A) proceedings for the adoption of the child had been instituted by such individual before his death, or (B) such child was adopted by such individual's surviving spouse before the end of two years after (i) the day on which such individual died or (ii) the date of enactment of the Social Security Amendments of 1958; except that this sentence shall not apply if at the time of such individual's death such person was receiving regular contributions toward his support from someone other than such individual or his spouse, or from any public or private welfare organization which furnishes services or assistance for children. For purposes of clause (2), a person who is not the stepchild of an individual shall be deemed the stepchild of such individual if such individual was not the mother or adopting mother or the father or adopting father of such person and such individual and the mother or adopting mother, or the father or adopting father, as the case may be, if such person went through a marriage ceremony resulting in a purported marriage between them which, but for a legal impediment described in the last sentence of subsection (h) (1) (B), would have been a valid marriage.

<sup>1</sup> Applies to benefits for months after December 1971, but only on the basis of applications filed on or after date of enactment.

**Husband**

(f) The term "husband" means the husband of an individual, but only if (1) he is the father of her son or daughter, (2) he was married to her for a period of not less than one year immediately preceding the day on which his application is filed, or (3) in the month prior to the month of his marriage to her (A) he was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (f) or (h) of section 202, (B) he had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 202(s)), or (C) he was entitled to, or upon application therefor and attainment of the required age (if any) he would have been entitled to, a widower's, child's (after attainment of age 18), or parent's insurance annuity under section 5 of the Railroad Retirement Act of 1937, as amended.

**Widower**

(g) The term "widower" (except when used in section 202(i)) means the surviving husband of an individual, but only if (1) he is the father of her son or daughter, (2) he legally adopted her son or daughter while he was married to her and while such son or daughter was under the age of eighteen, (3) she legally adopted his son or daughter while he was married to her and while such son or daughter was under the age of eighteen, (4) he was married to her at the time both of them legally adopted a child under the age of eighteen, (5) he was married to her for a period of not less than nine months immediately prior to the day on which she died, or (6) in the month before the month of his marriage to her (A) he was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (f) or (h) of section 202, (B) he had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 202(s)), or (C) he was entitled to, or on application therefor and attainment of the required age (if any) he would have been entitled to, a widower's, child's (after attainment of age 18), or parent's insurance annuity under section 5 of the Railroad Retirement Act of 1937, as amended.

**Determination of Family Status**

(h)(1)(A) An applicant is the wife, husband, widow, or widower of a fully or currently insured individual for purposes of this title if the courts of the State in which such insured individual is domiciled at the time such applicant files an application, or, if such insured individual is dead, the courts of the State in which he was domiciled at the time of death, or, if such insured individual is or was not so domiciled in any State, the courts of the District of Columbia, would find that such applicant and such insured individual were validly married at the time such applicant files such application or, if such insured individual is dead, at the time he died. If such courts would not find that such applicant and such insured individual were validly married at such time, such applicant shall, nevertheless be deemed to be the wife, husband, widow, or widower, as the case may be, of such insured individual if such applicant would, under the laws applied by such courts

in determining the devolution of intestate personal property, have the same status with respect to the taking of such property as a wife, husband, widow, or widower of such insured individual.

(B) In any case where under subparagraph (A) an applicant is not (and is not deemed to be) the wife, widow, husband, or widower of a fully or currently insured individual, or where under subsection (b), (c), (f), or (g) such applicant is not the wife, widow, husband, or widower of such individual, but it is established to the satisfaction of the Secretary that such applicant in good faith went through a marriage ceremony with such individual resulting in a purported marriage between them which, but for a legal impediment not known to the applicant at the time of such ceremony, would have been a valid marriage, and such applicant and the insured individual were living in the same household at the time of the death of such insured individual or (if such insured individual is living) at the time such applicant files the application, then, for purposes of subparagraph (A) and subsections (b), (c), (f), and (g), such purported marriage shall be deemed to be a valid marriage. The provisions of the preceding sentence shall not apply (i) if another person is or has been entitled to a benefit under subsection (b), (c), (e), (f), or (g) of section 202 on the basis of the wages and self-employment income of such insured individual and such other person is (or is deemed to be) a wife, widow, husband, or widower of such insured individual under subparagraph (A) at the time such applicant files the application, or (ii) if the Secretary determines, on the basis of information brought to his attention, that such applicant entered into such purported marriage with such insured individual with knowledge that it would not be a valid marriage. The entitlement to a monthly benefit under subsection (b), (c), (e), (f), or (g) of section 202, based on the wages and self-employment income of such insured individual, of a person who would not be deemed to be a wife, widow, husband, or widower of such insured individual but for this subparagraph, shall end with the month before the month (i) in which the Secretary certifies, pursuant to section 205(i), that another person is entitled to a benefit under subsection (b), (c), (e), (f), or (g) of section 202 on the basis of the wages and self-employment income of such insured individual, if such other person is (or is deemed to be) the wife, widow, husband, or widower of such insured individual under subparagraph (A), or (ii) if the applicant is entitled to a monthly benefit under subsection (b) or (c) of section 202, in which such applicant entered into a marriage, valid without regard to this subparagraph, with a person other than such insured individual. For purposes of this subparagraph, a legal impediment to the validity of a purported marriage includes only an impediment (i) resulting from the lack of dissolution of a previous marriage or otherwise arising out of such previous marriage or its dissolution, or (ii) resulting from a defect in the procedure followed in connection with such purported marriage.

(2)(A) In determining whether an applicant is the child or parent of a fully or currently insured individual for purposes of this title, the Secretary shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such insured individual is domiciled at the time such applicant files application, or, if such insured individual is dead, by the courts of the State in which he was domiciled at the time of his

death, or, if such insured individual is or was not so domiciled in any State, by the courts of the District of Columbia. Applicants who according to such law would have the same status relative to taking intestate personal property as a child or parent shall be deemed such.

(B) If an applicant is a son or daughter of a fully or currently insured individual but is not (and is not deemed to be) the child of such insured individual under subparagraph (A), such applicant shall nevertheless be deemed to be the child of such insured individual if such insured individual and the mother or father, as the case may be, of such applicant went through a marriage ceremony resulting in a purported marriage between them which, but for a legal impediment described in the last sentence of paragraph (1)(B), would have been a valid marriage.

(3) An applicant who is the son or daughter of a fully or currently insured individual, but who is not (and is not deemed to be) the child of such insured individual under paragraph (2), shall nevertheless be deemed to be the child of such insured individual if:

(A) in the case of an insured individual entitled to old-age insurance benefits (who was not, in the month preceding such entitlement, entitled to disability insurance benefits)—

(i) such insured individual—

(I) has acknowledged in writing that the applicant is his son or daughter,

(II) has been decreed by a court to be the father of the applicant, or

(III) has been ordered by a court to contribute to the support of the applicant because the applicant is his son or daughter,

and such acknowledgement, court decree, or court order was made not less than one year before such insured individual became entitled to old-age insurance benefits or attained age 65, whichever is earlier; or

(ii) such insured individual is shown by evidence satisfactory to the Secretary to be the father of the applicant and was living with or contributing to the support of the applicant at the time such insured individual became entitled to benefits or attained age 65, whichever first occurred;

(B) in the case of an insured individual entitled to disability insurance benefits, or who was entitled to such benefits in the month preceding the first month for which he was entitled to old-age insurance benefits—

(i) such insured individual—

(I) has acknowledged in writing that the applicant is his son or daughter,

(II) has been decreed by a court to be the father of the applicant, or

(III) has been ordered by a court to contribute to the support of the applicant because the applicant is his son or daughter,

and such acknowledgment, court decree, or court order was made before such insured individual's most recent period of disability began; or

(ii) such insured individual is shown by evidence satisfactory to the Secretary to be the father of the applicant and

- was living with or contributing to the support of that applicant at the time such period of disability began;
- (C) in the case of a deceased individual—
- (i) such insured individual—
    - (I) had acknowledged in writing that the applicant is his son or daughter,
    - (II) had been decreed by a court to be the father of the applicant, or
    - (III) had been ordered by a court to contribute to the support of the applicant because the applicant was his son or daughter,
 and such acknowledgment, court decree, or court order was made before the death of such insured individual, or
  - (ii) such insured individual is shown by evidence satisfactory to the Secretary to have been the father of the applicant, and such insured individual was living with or contributing to the support of the applicant at the time such insured individual died.

#### Disability; Period of Disability

(i)(1) Except for purposes of sections 202(d), 202(e), 202(f), 223, and 225, the term "disability" means (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months, or (B) blindness; and the term "blindness" means central visual acuity of 20/200 or less in the better eye with the use of correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less. The provisions of paragraphs (2)(A), (3), (4), and (5) of section 223(d) shall be applied for purposes of determining whether an individual is under a disability within the meaning of the first sentence of this paragraph in the same manner as they are applied for purposes of paragraph (1) of such section. Nothing in this title shall be construed as authorizing the Secretary or any other officer or employee of the United States to interfere in any way with the practice of medicine or with relationships between practitioners of medicine and their patients, or to exercise any supervision or control over the administration or operation of any hospital.

(2)(A) The term "period of disability" means a continuous period (beginning and ending as hereinafter provided in this subsection) during which an individual was under a disability (as defined in paragraph (1)), but only if such period is of not less than [6] <sup>1</sup> full

<sup>1</sup> The amendments made by this section shall be effective with respect to applications for disability insurance benefits under section 223 of the Social Security Act, and for disability determinations under section 216(i) of such act, filed—

(1) in or after the month in which this act is enacted, or

(2) before the month in which this act is enacted if—

(A) notice of the final decision of the Secretary of Health, Education, and Welfare has not been given to the applicant before such month; or

(B) the notice referred to in subparagraph (A) has been so given before such month but a civil action with respect to such final decision is commenced under section 205(g) of the Social Security Act (whether before, in, or after such month) and the decision in such civil action has not become final before such month;

except that no monthly benefits under title II of the Social Security Act shall be payable or increased by reason of the amendments made by this section for months before January 1972.

calendar months' duration or such individual was entitled to benefits under section 223 for one or more months in such period.

(B) No period of disability shall begin as to any individual unless such individual files an application for a disability determination with respect to such period; and no such period shall begin as to any individual after such individual attains the age of 65.

*In the case of a deceased individual, the requirement of an application under the preceding sentence may be satisfied by an application for a disability determination filed with respect to such individual within 3 months after the month in which he died.<sup>1</sup>*

(C) A period of disability shall begin—

(i) on the day the disability began, but only if the individual satisfies the requirements of paragraph (3) on such day; or

(ii) if such individual does not satisfy the requirements of paragraph (3) on such day, then on the first day of the first quarter thereafter in which he satisfies such requirements.

(D) A period of disability shall end with the close of whichever of the following months is the earlier: (i) the month preceding the month in which the individual attains age 65, or (ii) the second month following the month in which the disability ceases.

(E) Except as is otherwise provided in subparagraph (F), no application for a disability determination which is filed more than 12 months after the month prescribed by subparagraph (D) as the month in which the period of disability ends (determined without regard to subparagraph (B) and this subparagraph) shall be accepted as an application for purposes of this paragraph.

(F) An application for a disability determination which is filed more than 12 months after the month prescribed by subparagraph (D) as the month in which the period of disability ends (determined without regard to subparagraphs (B) and (E)) shall be accepted as an application for purposes of this paragraph if—

(i) in the case of an application filed by or on behalf of an individual with respect to a disability which ends after the month in which the Social Security Amendments of 1967 is enacted, such application is filed not more than 36 months after the month in which such disability ended, such individual is alive at the time the application is filed, and the Secretary finds in accordance with regulations prescribed by him that the failure of such individual to file an application for a disability determination within the time specified in subparagraph (E) was attributable to a physical or mental condition of such individual which rendered him incapable of executing such an application, and

(ii) in the case of an application filed by or on behalf of an individual with respect to a period of disability which ends in or before the month in which the Social Security Amendments of 1967 is enacted.

(I) such application is filed not more than 12 months after the month in which the Social Security Amendments of 1967 is enacted,

(II) a previous application for a disability determination has been filed by or on behalf of such individual (1) in or

<sup>1</sup> Applies in case of deaths occurring after Dec. 31, 1969. Applications with respect to deaths occurring after Dec. 31, 1969, but before date of enactment which is filed within 3 months in or after the month of enactment shall be deemed filed in the month in which such death occurred.

before the month in which the Social Security Amendments of 1967 is enacted, and (2) not more than 36 months after the month in which his disability ended, and

(III) the Secretary finds in accordance with regulations prescribed by him, that the failure of such individual to file an application within the then specified time period was attributable to a physical or mental condition of such individual which rendered him incapable of executing such an application.

In making a determination under this subsection, with respect to the disability or period of disability of any individual whose application for a determination thereof is accepted solely by reason of the provisions of this subparagraph (F), the provisions of this subsection (other than the provisions of this subparagraph) shall be applied as such provisions are in effect at the time such determination is made.

(G) An application for a disability determination filed before the first day on which the applicant satisfies the requirements for a period of disability under this subsection shall be deemed a valid application only if the applicant satisfies the requirements for a period of disability before the Secretary makes a final decision on the application. If upon final decision by the Secretary, or decision upon judicial review thereof, such applicant is found to satisfy such requirements, the application shall be deemed to have been filed on such first day.

(3) The requirements referred to in clauses (i) and (ii) of paragraph (2)(C) are satisfied by an individual with respect to any quarter only if—

(A) he would have been a fully insured individual (as defined in section 214) had he attained age 62 [(if a woman) of age 65 (if a man)]<sup>1</sup> and filed application for benefits under section 202(a) on the first day of such quarter; and

(B)(i) he had not less than 20 quarters of coverage during the 40-quarter period which ends with such quarter, or

(ii) if such quarter ends before he attains (or would attain) age 31 not less than one-half (and not less than 6) of the quarters during the period ending with such quarter and beginning after he attained the age of 21 were quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter were quarters of coverage,

[except that the provisions of subparagraph (A) of this paragraph shall not apply in the case of an individual with respect to whom a period of disability would, but for such subparagraph, begin before 1951. For purposes of subparagraph (B) of this paragraph, when the number of quarters in any period is an odd number, such number shall be reduced by one, and a quarter shall not be counted as part of any period if any part of such quarter was included in a prior period of disability unless such quarter was a quarter of coverage.]<sup>2</sup>

*except that the provisions of subparagraph (B) of this paragraph shall not apply in the case of an individual who is blind (within the meaning of "blindness" as defined in paragraph (1)).<sup>2</sup>*

(4) [Repealed.]

<sup>1</sup> Applies only in the case of a man who attains (or would attain) age 62 after December 1973.

<sup>2</sup> See footnote 1 on page 129.

**Periods of Limitations Ending on Nonwork Days**

(j) Where this title, any provision of another law of the United States (other than the Internal Revenue Code of 1954) relating to or changing the effect of this title, or any regulation issued by the Secretary pursuant thereto provides for a period within which an act is required to be done which affects eligibility for or the amount of any benefit or payment under this title or is necessary to establish or protect any rights under this title, and such period ends on a Saturday, Sunday, or legal holiday, or on any other day all or part of which is declared to be a nonwork day for Federal employees by statute or Executive order, then such act shall be considered as done within such period if it is done on the first day thereafter which is not a Saturday, Sunday, or legal holiday or any other day all or part of which is declared to be a nonwork day for Federal employees by statute or Executive order. For purposes of this subsection, the day on which a period ends shall include the day on which an extension of such period, as authorized by law or by the Secretary pursuant to law, ends. The provisions of this subsection shall not extend the period during which benefits under this title may (pursuant to section 202(j)(1) or 223(b)) be paid for months prior to the day application for such benefits is filed, or during which an application for benefits under this title may (pursuant to section 202(j)(2) or 223(b)) be accepted as such.

**Waiver of Nine-Month Requirement for Widow, Stepchild, or Widower in Case of Accidental Death or in Case of Serviceman Dying in Line of Duty, or in Case of Remarriage to the Same Individual<sup>1</sup>**

(k) The requirement in clause (5) of subsection (c) or clause (5) of subsection (g) that the surviving spouse of an individual have been married to such individual for a period of not less than nine months immediately prior to the day on which such individual died in order to qualify as such individual's widow or widower, and the requirement in subsection (e) that the stepchild of a deceased individual have been such stepchild for not less than nine months immediately preceding the day on which such individual died in order to qualify as such individual's child, shall be deemed to be satisfied, where such individual dies within the applicable nine-month period, **[if]** if—

(1) his death—

**[(1)]** (A) is accidental, or

**[(2)]** (B) occurs in line of duty while he is a member of a uniformed service serving on active duty (as defined in section 210(l)(2)),

and he would satisfy such requirement if a three-month period **[;]**, or

(2) (A) *the widow or widower of such individual had been previously married to such individual and subsequently divorced and such requirement would have been satisfied at the time of such divorce if such previous marriage had been terminated by the death of such individual at such time instead of by divorce; or*

(B) *the stepchild of such individual had been the stepchild of such individual during a previous marriage of such stepchild's parent to such individual which ended in divorce and such requirement would have been satisfied at the time of such divorce if such previous marriage had been*

<sup>1</sup> Applies to benefits for months after December 1971 on the basis of applications filed in or after month of enactment.



*terminated by the death of such individual at such time instead of by divorce;*<sup>1</sup>

except that this subsection shall not apply if the Secretary determines that at the time of the marriage involved the individual could not have reasonably been expected to live for nine months. For purposes of paragraph (1)(A) of [the preceding sentence] *this subsection*, the death of an individual is accidental if he receives bodily injuries solely through violent, external, and accidental means and, as a direct result of the bodily injuries and independently of all other causes, loses his life not later than three months after the day on which he receives such bodily injuries.

### Benefits in Case of Veterans

**Sec. 217.** (a)(1) For purposes of determining entitlement to and the amount of any monthly benefit for any month after August 1950, or entitlement to and the amount of any lump-sum death payment in case of a death after such month, payable under this title on the basis of the wages and self-employment income of any World War II veteran, and for purposes of section 216(i)(3), such veteran shall be deemed to have been paid wages (in addition to the wages, if any, actually paid to him) of \$160 in each month during any part of which he served in the active military or naval service of the United States during World War II. This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be, would be payable without its application; or

(B) a benefit (other than a benefit payable in a lump sum unless it is a commutation of, or a substitute for, periodic payments) which is based, in whole or in part, upon the active military or naval service of such veteran during World War II is determined by any agency or wholly owned instrumentality of the United States (other than the Veterans' Administration) to be payable by it under any other law of the United States or under a system established by such agency or instrumentality. The provisions of clause (B) shall not apply in the case of any monthly benefit or lump-sum death payment under this title if its application would reduce by \$0.50 or less the primary insurance amount (as computed under section 215 prior to any recomputation thereof pursuant to subsection (f) of such section) of the individual on whose wages and self-employment income such benefit or payment is based. The provisions of clause (B) shall also not apply for purposes of section 216(i)(3).

(2) Upon application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any World War II veteran, the Secretary of Health, Education, and Welfare shall make a decision without regard to clause (B) of paragraph (1) of this subsection unless he has been notified by some other agency or instrumentality of the United States that, on the basis of the military or naval service of such veteran during World War II, a benefit described in clause (B) of paragraph (1) has been determined by such agency or instrumentality to be payable by it. If he has not been so notified, the Secretary of Health, Education, and Welfare shall then ascertain whether some other agency or wholly owned instrumentality of the

<sup>1</sup> Applies to benefits for months after December 1971 on the basis of applications filed in or after month of enactment.

United States has decided that a benefit described in clause (B) of paragraph (1) is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Secretary of Health, Education, and Welfare, and the Secretary shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection.

(3) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on military or naval service during World War II shall, at the request of the Secretary of Health, Education, and Welfare, certify to him, with respect to any veteran, such information as the Secretary deems necessary to carry out his functions under paragraph (2) of this subsection.

(b)(1) Any World War II veteran who died during the period of three years immediately following his separation from the active military or naval service of the United States shall be deemed to have died a fully insured individual whose primary insurance amount is the amount determined under section 215(c). Notwithstanding section 215(d), the primary insurance benefit (for purposes of section 215(c)) of such veteran shall be determined as provided in this title as in effect prior to the enactment of this section, except that the 1 per centum addition provided for in section 209(e)(2) of this Act as in effect prior to the enactment of this section shall be applicable only with respect to calendar years prior to 1951. This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be, would be payable without its application;

(B) any pension or compensation is determined by the Veterans' Administration to be payable by it on the basis of the death of such veteran;

(C) the death of the veteran occurred while he was in the active military or naval service of the United States; or

(D) such veteran has been discharged or released from the active military or naval service of the United States subsequent to July 26, 1951.

(2) Upon an application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any World War II veteran, the Secretary of Health, Education, and Welfare shall make a decision without regard to paragraph (1)(B) of this subsection unless he has been notified by the Veterans' Administration that pension or compensation is determined to be payable by the Veterans' Administration by reason of the death of such veteran. The Secretary of Health, Education, and Welfare shall thereupon report such decision to the Veterans' Administration. If the Veterans' Administration in any such case has made an adjudication or thereafter makes an adjudication that any pension or compensation is payable under any law administered by it, it shall notify the Secretary of Health, Education, and Welfare, and the Secretary shall certify no further benefits for payment, or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection. Any payment theretofore certified by the Secretary of Health, Education,

and Welfare on the basis of paragraph (1) of this subsection to any individual, not exceeding the amount of any accrued pension or compensation payable to him by the Veterans' Administration, shall (notwithstanding the provisions of section 3101 of title 38, United States Code) be deemed to have been paid to him by such Administration on account of such accrued pension or compensation. No such payment certified by the Secretary of Health, Education, and Welfare, and no payment certified by him for any month prior to the first month for which any pension or compensation is paid by the Veterans' Administration shall be deemed by reason of this subsection to have been an erroneous payment.

(c) In the case of any World War II veteran to whom subsection (a) is applicable, proof of support required under section 202(h) may be filed by a parent at any time prior to July 1951 or prior to the expiration of two years after the date of the death of such veteran, whichever is the later.

(d) For the purposes of this section—

(1) The term "World War II" means the period beginning with September 16, 1940, and ending at the close of July 24, 1947.

(2) The term "World War II veteran" means any individual who served in the active military or naval service of the United States at any time during World War II and who, if discharged or released therefrom, was so discharged or released under conditions other than dishonorable after active service of ninety days or more or by reason of a disability or injury incurred or aggravated in service in line of duty; but such term shall not include any individual who died while in the active military or naval service of the United States if his death was inflicted (other than by an enemy of the United States) as lawful punishment for a military or naval offense.

(e)(1) For purposes of determining entitlement to and the amount of any monthly benefit or lump-sum death payment payable under this title on the basis of the wages and self-employment income of any veteran (as defined in paragraph (4)), and for purposes of section 216(i)(3), such veteran shall be deemed to have been paid wages (in addition to the wages, if any, actually paid to him) of \$160 in each month during any part of which he served in the active military or naval service of the United States on or after July 25, 1947, and prior to January 1, 1957. This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be, would be payable without its application; or

(B) a benefit (other than a benefit payable in a lump sum unless it is a commutation of, or a substitute for, periodic payments) which is based, in whole or in part, upon the active military or naval service of such veteran on or after July 25, 1947, and prior to January 1, 1957, is determined by any agency or wholly owned instrumentality of the United States (other than the Veterans' Administration) to be payable by it under any other law of the United States or under a system established by such agency or instrumentality.

The provisions of clause (B) shall not apply in the case of any monthly benefit or lump-sum death payment under this title if its application

would reduce by \$0.50 or less the primary insurance amount (as computed under section 215 prior to any recomputation thereof pursuant to subsection (f) of such section) of the individual on whose wages and self-employment income such benefit or payment is based. The provisions of clause (B) shall also not apply for purposes of section 216(i)(3). In the case of monthly benefits under this title for months after December 1956 (and any lump-sum death payment under this title with respect to a death occurring after December 1956) based on the wages and self-employment income of a veteran who performed service (as a member of a uniformed service) to which the provisions of section 210(l)(1) are applicable, wages which would, but for the provisions of clause (B), be deemed under this subsection to have been paid to such veteran with respect to his active military or naval service performed after December 1950 shall be deemed to have been paid to him with respect to such service notwithstanding the provisions of such clause, but only if the benefits referred to in such clause which are based (in whole or in part) on such service are payable solely by the Army, Navy, Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey or Public Health Service.

(2) Upon application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any veteran, the Secretary of Health, Education, and Welfare shall make a decision without regard to clause (B) of paragraph (1) of this subsection unless he has been notified by some other agency or instrumentality of the United States that, on the basis of the military or naval service of such veteran on or after July 25, 1947, and prior to January 1, 1957, a benefit described in clause (B) of paragraph (1) has been determined by such agency or instrumentality to be payable by it. If he has not been so notified, the Secretary of Health, Education, and Welfare shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (1) is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Secretary of Health, Education, and Welfare, and the Secretary shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection.

(3) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on military or naval service on or after July 25, 1947, and prior to January 1, 1957, shall, at the request of the Secretary of Health, Education, and Welfare, certify to him, with respect to any veteran, such information as the Secretary deems necessary to carry out his functions under paragraph (2) of this subsection.

(4) For the purposes of this subsection, the term "veteran" means any individual who served in the active military or naval service of the United States at any time on or after July 25, 1947, and prior to January 1, 1957, and who, if discharged or released therefrom, was so discharged or released under conditions other than dishonorable after active service of ninety days or more or by reason of a disability or injury incurred or aggravated in service in line of duty; but such term shall not include any individual who died while in the active

military or naval service of the United States if his death was inflicted (other than by an enemy of the United States) as lawful punishment for a military or naval offense.

(f)(1) In any case where a World War II veteran (as defined in subsection (d)(2)) or a veteran (as defined in subsection (e)(4)) has died or shall hereafter die, and his widow or child is entitled under subchapter III of chapter 83 of title 5, United States Code, to an annuity in the computation of which his active military or naval service was included, clause (B) of subsection (a)(1) or clause (B) of subsection (e)(1) shall not operate (solely by reason of such annuity) to make such subsection inapplicable in the case of any monthly benefit under section 202 which is based on his wages and self-employment income; except that no such widow or child shall be entitled under section 202 to any monthly benefit in the computation of which such service is included by reason of this subsection (A) unless such widow or child after December 1956 waives his or her right to receive such annuity, or (B) for any month prior to the first month with respect to which the Civil Service Commission certifies to the Secretary of Health, Education, and Welfare that (by reason of such waiver) no further annuity will be paid to such widow or child under such subchapter III on the basis of such veteran's military or civilian service. Any such waiver shall be irrevocable.

(2) Whenever a widow waives her right to receive such annuity such waiver shall constitute a waiver on her own behalf; a waiver by a legal guardian or guardians, or, in the absence of a legal guardian, the person (or persons) who has the child in his care, of the child's right to receive such annuity shall constitute a waiver on behalf of such child. Such a waiver with respect to an annuity based on a veteran's service shall be valid only if the widow and all children, or, if there is no widow, all the children, waive their rights to receive annuities under subchapter III of chapter 83 of title 5, United States Code, based on such veteran's military or civilian service.

(g)(1) In September 1965, and in every fifth September thereafter up to and including September 2010, the Secretary shall determine the amount which, if paid in equal installments at the beginning of each fiscal year in the period beginning—

(A) with July 1, 1965, in the case of the first such determination, and

(B) with the July 1 following the determination in the case of all other such determinations,

and ending with the close of June 30, 2015, would accumulate, with interest compounded annually, to an amount equal to the amount needed to place each of the Trust Funds and the Federal Hospital Insurance Trust Fund in the same position at the close of June 30, 2015, as he estimates they would otherwise be in at the close of that date if section 210 of this Act as in effect prior to the Social Security Act Amendments of 1950, and this section, had not been enacted. The rate of interest to be used in determining such amount shall be the rate determined under section 201(d) for public-debt obligations which were or could have been issued for purchase by the Trust Funds in the June preceding the September in which such determination is made.

(2) There are authorized to be appropriated to the Trust Funds and the Federal Hospital Insurance Trust Fund—

(A) for the fiscal year ending June 30, 1966, an amount equal to the amount determined under paragraph (1) in September 1965, and

(B) for each fiscal year in the period beginning with July 1, 1966, and ending with the close of June 30, 2015, an amount equal to the annual installment for such fiscal year under the most recent determination under paragraph (1) which precedes such fiscal year.

(3) For the fiscal year ending June 30, 2016, there is authorized to be appropriated to the Trust Funds and the Federal Hospital Insurance Trust Fund such sums as the Secretary determines would place the Trust Funds and the Federal Hospital Insurance Trust Fund in the same position in which they would have been at the close of June 30, 2015, if section 210 of this Act as in effect prior to the Social Security Act Amendments of 1950, and this section, had not been enacted.

(4) There are authorized to be appropriated to the Trust Funds and the Federal Hospital Insurance Trust Fund annually, as benefits under this title and part A of title XVIII are paid after June 30, 2015, such sums as the Secretary determines to be necessary to meet the additional costs, resulting from subsections (a), (b), and (e), of such benefits (including lump-sum death payments).

**Gratuitous Wage Credits for American Citizens Who Served in the Armed Forces of Allied Countries**

(h)(1) For the purposes of this section, any individual who the Secretary finds—

(A) served during World War II (as defined in subsection (d)(1)) in the active military or naval service of a country which was on September 16, 1940, at war with a country with which the United States was at war during World War II;

(B) entered into such active service on or before December 8, 1941;

(C) was a citizen of the United States throughout such period of service or lost his United States citizenship solely because of his entrance into such service;

(D) had resided in the United States for a period or periods aggregating four years during the five-year period ending on the day of, and was domiciled in the United States on the day of, such entrance into such active service; and

(E)(i) was discharged or released from such service under conditions other than dishonorable after active service of ninety days or more or by reason of a disability or injury incurred or aggravated in service in line of duty, or

(ii) died while in such service,

shall be considered a World War II veteran (as defined in subsection (d)(2)) and such service shall be considered to have been performed in the active military or naval service of the United States.

(2) In the case of any individual to whom paragraph (1) applies, proof of support required under section 202 (f) or (h) may be filed at any time prior to the expiration of two years after the date of such individual's death or the date of the enactment of this subsection, whichever is the later,

## Voluntary Agreements for Coverage of State and Local Employees

### Purpose of Agreement

**Sec. 218.** (a)(1) The Secretary of Health, Education, and Welfare shall, at the request of any State, enter into an agreement with such State for the purpose of extending the insurance system established by this title to services performed by individuals as employees of such State or any political subdivision thereof. Each such agreement shall contain such provisions, not inconsistent with the provisions of this section, as the State may request.

(2) Notwithstanding section 210(a), for the purposes of this title the term "employment" includes any service included under an agreement entered into under this section.

### Definitions

(b) For the purposes of this section—

(1) The term "State" does not include the District of Columbia, Guam or American Samoa.

(2) The term "political subdivision" includes an instrumentality of (A) a State, (B) one or more political subdivisions of a State, or (C) a State and one or more of its political subdivisions.

(3) The term "employee" includes an officer of a State or political subdivision.

(4) The term "retirement system" means a pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof.

(5) The term "coverage group" means (A) employees of the State other than those engaged in performing service in connection with a proprietary function; (B) employees of a political subdivision of a State other than those engaged in performing service in connection with a proprietary function; (C) employees of a State engaged in performing service in connection with a single proprietary function; or (D) employees of a political subdivision of a State engaged in performing service in connection with a single proprietary function. If under the preceding sentence an employee would be included in more than one coverage group by reason of the fact that he performs service in connection with two or more proprietary functions or in connection with both a proprietary function and a nonproprietary function, he shall be included in only one such coverage group. The determination of the coverage group in which such employee shall be included shall be made in such manner as may be specified in the agreement. Civilian employees of National Guard units of a State who are employed pursuant to section 90 of the National Defense Act of June 3, 1916 (32 U.S.C., sec. 42), and paid from funds allotted to such units by the Department of Defense, shall for purposes of this section be deemed to be employees of the State and (notwithstanding the preceding provisions of this paragraph), shall be deemed to be a separate coverage group. For purposes of this section, individuals employed pursuant to an agreement, entered into pursuant to section 205 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1624) or section 14 of the

Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499n), between a State and the United States Department of Agriculture to perform services as inspectors of agricultural products may be deemed, at the option of the State, to be employees of the State and (notwithstanding the preceding provisions of this paragraph) shall be deemed to be a separate coverage group.

#### Services Covered

(c) (1) An agreement under this section shall be applicable to any one or more coverage groups designated by the State.

(2) In the case of each coverage group to which the agreement applies, the agreement must include all services (other than services excluded by or pursuant to subsection (d) or paragraph (3), (5), or (6) of this subsection) performed by individuals as members of such group.

(3) Such agreement shall, if the State requests it, exclude (in the case of any coverage group) any one or more of the following:

(A) All services in any class or classes of (i) elective positions, (ii) part-time positions, or (iii) positions the compensation for which is on a fee basis;

(B) All services performed by individuals as members of a coverage group in positions covered by a retirement system on the date such agreement is made applicable to such coverage group, but only in the case of individuals who, on such date (or, if later, the date on which they first occupy such positions), are not eligible to become members of such system and whose services in such positions have not already been included under such agreement pursuant to subsection (d)(3).

(4) The Secretary of Health, Education, and Welfare shall, at the request of any State, modify the agreement with such State so as to (A) include any coverage group to which the agreement did not previously apply, or (B) include, in the case of any coverage group to which the agreement applies, services previously excluded from the agreement; but the agreement as so modified may not be inconsistent with the provisions of this section applicable in the case of an original agreement with a State. A modification of an agreement pursuant to clause (B) of the preceding sentence may apply to individuals to whom paragraph (3)(B) is applicable (whether or not the previous exclusion of the service of such individuals was pursuant to such paragraph), but only if such individuals are, on the effective date specified in such modification, ineligible to be members of any retirement system or if the modification with respect to such individuals is pursuant to subsection (d)(3).

(5) Such agreement shall, if the State requests it, exclude (in the case of any coverage group) any agricultural labor, or service performed by a student, designated by the State. This paragraph shall apply only with respect to service which is excluded from employment by any provision of section 210(a) other than paragraph (7) of such section and service the remuneration for which is excluded from wages by paragraph (2) of section 209(h).

(6) Such agreement shall exclude—

(A) service performed by an individual who is employed to relieve him from unemployment,



(B) service performed in a hospital, home, or other institution by a patient or inmate thereof,

(C) covered transportation service (as determined under section 210(k)), and

(D) service (other than agricultural labor or service performed by a student) which is excluded from employment by any provision of section 210(a) other than paragraph (7) of such section, and

(E) service performed by an individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency.

(7) No agreement may be made applicable (either in the original agreement or by any modification thereof) to service performed by any individual to whom paragraph (3)(B) is applicable unless such agreement provides (in the case of each coverage group involved) either that the service of any individual to whom such paragraph is applicable and who is a member of such coverage group shall continue to be covered by such agreement in case he thereafter becomes eligible to be a member of a retirement system, or that such service shall cease to be so covered when he becomes eligible to be a member of such a system (but only if the agreement is not already applicable to such system pursuant to subsection (d)(3)), whichever may be desired by the State.

(8) Notwithstanding any other provision of this section, the agreement with any State entered into under this section may at the option of the State be modified on or after January 1, 1968, to exclude service performed by election officials or election workers if the remuneration paid in a calendar quarter for such service is less than \$50. Any modification of an agreement pursuant to this paragraph shall be effective with respect to services performed after an effective date, specified in such modification, which shall not be earlier than the last day of the calendar quarter in which the modification is mailed or delivered by other means to the Secretary.

#### **Positions Covered by Retirement Systems**

(d)(1) No agreement with any State may be made applicable (either in the original agreement or by any modification thereof) to any service performed by employees as members of any coverage group in positions covered by a retirement system either (A) on the date such agreement is made applicable to such coverage group, or (B) on the date of enactment of the succeeding paragraph of this subsection (except in the case of positions which are, by reason of action by such State or political subdivision thereof, as may be appropriate, taken prior to the date of enactment of such succeeding paragraph, no longer covered by a retirement system on the date referred to in clause (A), and except in the case of positions excluded by paragraph (5)(A)). The preceding sentence shall not be applicable to any service performed by an employee as a member of any coverage group in a position (other than a position excluded by paragraph (5)(A)) covered by a retirement system on the date an agreement is made applicable to such coverage group if, on such date (or, if later, the date on which such individual first occupies such position), such individual is ineligible to be a member of such system.

(2) It is hereby declared to be the policy of the Congress in enacting the succeeding paragraphs of this subsection that the protection afforded employees in positions covered by a retirement system on the date an agreement under this section is made applicable to service performed in such positions, or receiving periodic benefits under such retirement system at such time, will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof.

(3) Notwithstanding paragraph (1), an agreement with a State may be made applicable (either in the original agreement or by any modification thereof) to service performed by employees in positions covered by a retirement system (including positions specified in paragraph (4) but not including positions excluded by or pursuant to paragraph (5)), if the governor of the State, or an official of the State designated by him for the purpose, certifies to the Secretary of Health, Education, and Welfare that the following conditions have been met:

(A) A referendum by secret written ballot was held on the question of whether service in positions covered by such retirement system should be excluded from or included under an agreement under this section;

(B) An opportunity to vote in such referendum was given (and was limited) to eligible employees;

(C) Not less than ninety days' notice of such referendum was given to all such employees;

(D) Such referendum was conducted under the supervision of the governor or an agency or individual designated by him; and

(E) A majority of the eligible employees voted in favor of including service in such positions under an agreement under this section.

An employee shall be deemed an "eligible employee" for purposes of any referendum with respect to any retirement system if, at the time such referendum was held, he was in a position covered by such retirement system and was a member of such system, and if he was in such a position at the time notice of such referendum was given as required by clause (C) of the preceding sentence; except that he shall not be deemed an "eligible employee" if, at the time the referendum was held, he was in a position to which the State agreement already applied, or if he was in a position excluded by or pursuant to paragraph (5). No referendum with respect to a retirement system shall be valid for purposes of this paragraph unless held within the two-year period which ends on the date of execution of the agreement or modification which extends the insurance system established by this title to such retirement system, nor shall any referendum with respect to a retirement system be valid for purposes of this paragraph if held less than one year after the last previous referendum held with respect to such retirement system.

(4) For the purposes of subsection (c) of this section, the following employees shall be deemed to be a separate coverage group—

(A) all employees in positions which were covered by the same retirement system on the date the agreement was made applicable to such system (other than employees to whose services the agreement already applied on such date);

(B) all employees in positions which became covered by such system at any time after such date; and

(C) all employees in positions which were covered by such system at any time before such date and to whose services the insurance system established by this title has not been extended before such date because the positions were covered by such retirement system (including employees to whose services the agreement was not applicable on such date because such services were excluded pursuant to subsection (c)(3)(B)).

(5)(A) Nothing in paragraph (3) of this subsection shall authorize the extension of the insurance system established by this title to service in any policeman's or fireman's position.

(B) At the request of the State, any class or classes of positions covered by a retirement system which may be excluded from the agreement pursuant to paragraph (3) or (5) of subsection (c), and to which the agreement does not already apply, may be excluded from the agreement at the time it is made applicable to such retirement system; except that, notwithstanding the provisions of paragraph (3)(B) of such subsection, such exclusion may not include any services to which such paragraph (3)(B) is applicable. In the case of any such exclusion, each such class so excluded shall, for purposes of this subsection, constitute a separate retirement system in case of any modification of the agreement thereafter agreed to.

(6)(A) If a retirement system covers positions of employees of the State and positions of employees of one or more political subdivisions of the State, or covers positions of employees of two or more political subdivisions of the State, then, for purposes of the preceding paragraphs of this subsection, there shall, if the State so desires, be deemed to be a separate retirement system with respect to any one or more of the political subdivisions concerned and, where the retirement system covers positions of employees of the State, a separate retirement system with respect to the State or with respect to the State and any one or more of the political subdivisions concerned. Where a retirement system covering positions of employees of a State and positions of employees of one or more political subdivisions of a State, or covering positions of employees of two or more political subdivisions of the State, is not divided into separate retirement systems pursuant to the preceding sentence or pursuant to subparagraph (C), then the State may, for purposes of subsection (f) only, deem the system to be a separate retirement system with respect to any one or more of the political subdivisions concerned and, where the retirement system covers positions of employees of the State, a separate retirement system with respect to the State or with respect to the State and any one or more of the political subdivisions concerned.

(B) If a retirement system covers positions of employees of one or more institutions of higher learning, then, for purposes of such preceding paragraphs there shall, if the State so desires, be deemed to be a separate retirement system for the employees of each such institution of higher learning. For the purposes of this subparagraph, the term "institutions of higher learning" includes junior colleges and teachers colleges. If a retirement system covers positions of employees of a hospital which is an integral part of a political subdivision, then, for purposes of the preceding paragraphs there shall, if the State so

desires, be deemed to be a separate retirement system for the employees of such hospital.

(C) For the purposes of this subsection, any retirement system established by the State of Alaska, California, Connecticut, Florida, Georgia, Illinois, Massachusetts, Minnesota, Nevada, New Mexico, New York, North Dakota, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, Wisconsin, or Hawaii, or any political subdivision of any such State, which, on, before, or after the date of enactment of this subparagraph, is divided into two divisions or parts, one of which is composed of positions of members of such system who desire coverage under an agreement under this section and the other of which is composed of positions of members of such system who do not desire such coverage, shall, if the State so desires and if it is provided that there shall be included in such division or part composed of members desiring such coverage the positions of individuals who become members of such system after such coverage is extended, be deemed to be a separate retirement system with respect to each such division or part. If, in the case of a separate retirement system which is deemed to exist by reason of subparagraph (A) and which has been divided into two divisions or parts pursuant to the first sentence of this subparagraph, individuals become members of such system by reason of action taken by a political subdivision after coverage under an agreement under this section has been extended to the division or part thereof composed of positions of individuals who desire such coverage, the positions of such individuals who become members of such retirement system by reason of the action so taken shall be included in the division or part of such system composed of positions of members who do not desire such coverage if (i) such individuals, on the day before becoming such members, were in the division or part of another separate retirement system (deemed to exist by reason of subparagraph (A)) composed of positions of members of such system who do not desire coverage under an agreement under this section, and (ii) all of the positions in the separate retirement system of which such individuals so become members and all of the positions in the separate retirement system referred to in clause (i) would have been covered by a single retirement system if the State had not taken action to provide for separate retirement systems under this paragraph.

(D)(i) The position of any individual which is covered by any retirement system to which subparagraph (C) is applicable shall, if such individual is ineligible to become a member of such system on August 1, 1956, or, if later, the day he first occupies such position, be deemed to be covered by the separate retirement system consisting of the positions of members of the division or part who do not desire coverage under the insurance system established under this title.

(ii) Notwithstanding clause (i), the State may, pursuant to subsection (c)(4)(B) and subject to the conditions of continuation or termination of coverage provided for in subsection (c)(7), modify its agreement under this section to include services performed by all individuals described in clause (i) other than those individuals to whose services the agreement already applies. Such individuals shall be deemed (on and after the effective date of the modification) to be in positions covered by the separate retirement system consisting of

the positions of members of the division or part who desire coverage under the insurance system established under this title.

(E) An individual who is in a position covered by a retirement system to which subparagraph (C) is applicable and who is not a member of such system but is eligible to become a member thereof shall, for purposes of this subsection (other than paragraph (8)), be regarded as a member of such system; except that, in the case of any retirement system a division or part of which is covered under the agreement (either in the original agreement or by a modification thereof), which coverage is agreed to prior to 1960, the preceding provisions of this subparagraph shall apply only if the State so requests and any such individual referred to in such preceding provisions shall, if the State so requests, be treated, after division of the retirement system pursuant to such subparagraph (C), the same as individuals in positions referred to in subparagraph (F).

(F) In the case of any retirement system divided pursuant to subparagraph (C), the position of any member of the division or part composed of positions of members who do not desire coverage may be transferred to the separate retirement system composed of positions of members who desire such coverage if it is so provided in a modification of such agreement which is mailed, or delivered by other means, to the Secretary prior to 1970 or, if later, the expiration of two years after the date on which such agreement, or the modification thereof making the agreement applicable to such separate retirement system, as the case may be, is agreed to, but only if, prior to such modification or such later modification, as the case may be, the individual occupying such position files with the State a written request for such transfer. Notwithstanding subsection (f)(1), any such modification or later modification, providing for the transfer of additional positions within a retirement system previously divided pursuant to subparagraph (C) to the separate retirement system composed of positions of members who desire coverage, shall be effective with respect to services performed after the same effective date as that which was specified in the case of such previous division.

(G) For the purposes of this subsection, in the case of any retirement system of the State of Florida, Georgia, Minnesota, North Dakota, Pennsylvania, Washington, or Hawaii which covers positions of employees of such State who are compensated in whole or in part from grants made to such State under title III, there shall be deemed to be, if such State so desires, a separate retirement system with respect to any of the following:

- (i) the positions of such employees;
- (ii) the positions of all employees of such State covered by such retirement system who are employed in the department of such State in which the employees referred to in clause (i) are employed; or
- (iii) employees of such State covered by such retirement system who are employed in such department of such State in positions other than those referred to in clause (i).

(7) The certification by the governor (or an official of the State designated by him for the purpose) required under paragraph (3) shall be deemed to have been made, in the case of a division or part

(created under subparagraph (C) of paragraph (6) or the corresponding provision of prior law) consisting of the positions of members of a retirement system who desire coverage under the agreement under this section, if the governor (or the official so designated) certifies to the Secretary of Health, Education, and Welfare that—

(A) an opportunity to vote by written ballot on the question of whether they wish to be covered under an agreement under this section was given to all individuals who were members of such system at the time the vote was held;

(B) not less than ninety days' notice of such vote was given to all individuals who were members of such system on the date the notice was issued;

(C) the vote was conducted under the supervision of the governor or an agency or individual designated by him; and

(D) such system was divided into two parts or divisions in accordance with the provisions of subparagraphs (C) and (D) of paragraph (6) or the corresponding provision of prior law.

For purposes of this paragraph, an individual in a position to which the State agreement already applied or in a position excluded by or pursuant to paragraph (5) shall not be considered a member of the retirement system.

(8)(A) Notwithstanding paragraph (1), if under the provisions of this subsection an agreement is, after December 31, 1958, made applicable to service performed in positions covered by a retirement system, service performed by an individual in a position covered by such a system may not be excluded from the agreement because such position is also covered under another retirement system.

(B) Subparagraph (A) shall not apply to service performed by an individual in a position covered under a retirement system if such individual, on the day the agreement is made applicable to service performed in positions covered by such retirement system, is not a member of such system and is a member of another system.

(C) If an agreement is made applicable, prior to 1959, to service in positions covered by any retirement system, the preceding provisions of this paragraph shall be applicable in the case of such system if the agreement is modified to so provide.

(D) Except in the case of agreements with the States named in subsection (p) and agreements with interstate instrumentalities, nothing in this paragraph shall authorize the application of an agreement to service in any policeman's or fireman's position.

#### Payments and Reports by States

(e)(1) Each agreement under this section shall provide—

(A) that the State will pay to the Secretary of the Treasury, at such time or times as the Secretary of Health, Education, and Welfare may by regulations prescribe, amounts equivalent to the sum of the taxes which would be imposed by sections 3101 and 3111 of the Internal Revenue Code of 1954 if the services of employees covered by the agreement constituted employment as defined in section 3121 of such code; and

(B) that the State will comply with such regulations relating to payments and reports as the Secretary of Health, Education,

and Welfare may prescribe to carry out the purposes of this section.

(2) Where—

(A) an individual in any calendar year performs services to which an agreement under this section is applicable (i) as the employee of two or more political subdivisions of a State or (ii) as the employee of a State and one or more political subdivisions of such State; and

(B) such State provides all of the funds for the payment of those amounts referred to in paragraph (1)(A) which are equivalent to the taxes imposed by section 3111 of the Internal Revenue Code of 1954 with respect to wages paid to such individual for such services; and

(C) the political subdivision or subdivisions involved do not reimburse such State for the payment of such amounts or, in the case of services described in subparagraph (A)(ii), for the payment of so much of such amounts as is attributable to employment by such subdivision or subdivisions;

then, notwithstanding paragraph (1), the agreement under this section with such State may provide (either in the original agreement or by a modification thereof) that the amounts referred to in paragraph (1)(A) may be computed as though the wages paid to such individual for the services referred to in clause (A) of this paragraph were paid by one political subdivision for services performed in its employ; but the provisions of this paragraph shall be applicable only where such State complies with such regulations as the Secretary may prescribe to carry out the purposes of this paragraph. The preceding sentence shall be applicable with respect to wages paid after an effective date specified in such agreement or modification, but in no event with respect to wages paid before (i) January 1, 1957, in the case of an agreement or modification which is mailed or delivered by other means to the Secretary before January 1, 1962, or (ii) the first day of the year in which the agreement or modification is mailed or delivered by other means to the Secretary, in the case of an agreement or modification which is so mailed or delivered on or after January 1, 1962.

**Effective Date of Agreement**

(f)(1) Except as provided in subsection (e)(2), any agreement or modification of an agreement under this section shall be effective with respect to services performed after an effective date specified in such agreement or modification; except that such date may not be earlier than the last day of the sixth calendar year preceding the year in which such agreement or modification, as the case may be, is agreed to by the Secretary and the State.

(2) In the case of service performed by members of any coverage group—

(A) to which an agreement under this section is made applicable, and

(B) with respect to which the agreement, or modification thereof making the agreement so applicable, specifies an effective date earlier than the date of execution of such agreement and such modification, respectively,

the agreement shall, if so requested by the State, be applicable to such services (to the extent the agreement was not already applicable) performed before such date of execution and after such effective date by any individual as a member of such coverage group if he is such a member on a date, specified by the State, which is earlier than such date of execution, except that in no case may the date so specified be earlier than the date such agreement or such modification, as the case may be, is mailed, or delivered by other means, to the Secretary.

(3) Notwithstanding the provisions of paragraph (2) of this subsection, in the case of services performed by individuals as members of any coverage group to which an agreement under this section is made applicable, and with respect to which there were timely paid in good faith to the Secretary of the Treasury amounts equivalent to the sum of the taxes which would have been imposed by sections 3101 and 3111 of the Internal Revenue Code of 1954 had such services constituted employment for purposes of chapter 21 of such Code at the time they were performed, and with respect to which refunds were not obtained, such individuals may, if so requested by the State, be deemed to be members of such coverage group on the date designated pursuant to paragraph (2).

#### Termination of Agreement

(g)(1) Upon giving at least two years' advance notice in writing to the Secretary of Health, Education, and Welfare, a State may terminate, effective at the end of a calendar quarter specified in the notice, its agreement with the Secretary either—

(A) in its entirety, but only if the agreement has been in effect from its effective date for not less than five years prior to the receipt of such notice; or

(B) with respect to any coverage group designated by the State, but only if the agreement has been in effect with respect to such coverage group for not less than five years prior to the receipt of such notice.

(2) If the Secretary, after reasonable notice and opportunity for hearing to a State with whom he has entered into an agreement pursuant to this section, finds that the State has failed or is no longer legally able to comply substantially with any provision of such agreement or of this section, he shall notify such State that the agreement will be terminated in its entirety, or with respect to any one or more coverage groups designated by him, at such time, not later than two years from the date of such notice, as he deems appropriate, unless prior to such time he finds that there no longer is any such failure or that the cause for such legal inability has been removed.

(3) If any agreement entered into under this section is terminated in its entirety, the Secretary and the State may not again enter into an agreement pursuant to this section. If any such agreement is terminated with respect to any coverage group, the Secretary and the State may not thereafter modify such agreement so as to again make the agreement applicable with respect to such coverage group.

#### Deposits in Trust Fund; Adjustments

(h)(1) All amounts received by the Secretary of the Treasury under an agreement made pursuant to this section shall be deposited



in the Trust Funds and the Federal Hospital Insurance Trust Fund in the ratio in which amounts are appropriated to such Funds pursuant to subsection (a)(3) of section 201, subsection (b)(1) of such section, and subsection (a)(1) of section 1817, respectively.

(2) If more or less than the correct amount due under an agreement made pursuant to this section is paid with respect to any payment of remuneration, proper adjustments with respect to the amounts due under such agreement shall be made, without interest, in such manner and at such times as may be prescribed by regulations of the Secretary of Health, Education, and Welfare.

(3) If an overpayment cannot be adjusted under paragraph (2), the amount thereof and the time or times it is to be paid shall be certified by the Secretary of Health, Education, and Welfare to the Managing Trustee, and the Managing Trustee, through the Fiscal Service of the Treasury Department and prior to any action thereon by the General Accounting Office, shall make payment in accordance with such certification. The Managing Trustee shall not be held personally liable for any payment or payments made in accordance with a certification by the Secretary of Health, Education, and Welfare.

#### Regulations

(i) Regulations of the Secretary of Health, Education, and Welfare to carry out the purposes of this section shall be designed to make the requirements imposed on States pursuant to this section the same, so far as practicable, as those imposed on employers pursuant to this title and chapter 21 and subtitle F of the Internal Revenue Code of 1954.

#### Failure To Make Payments

(j) In case any State does not make, at the time or times due, the payments provided for under an agreement pursuant to this section, there shall be added, as part of the amounts due, interest at the rate of 6 per centum per annum from the date due until paid, and the Secretary of Health, Education, and Welfare may, in his discretion, deduct such amounts plus interest from any amounts certified by him to the Secretary of the Treasury for payment to such State under any other provision of this Act. Amounts so deducted shall be deemed to have been paid to the State under such other provision of this Act. Amounts equal to the amounts deducted under this subsection are hereby appropriated to the Trust Funds in the ratio in which amounts are deposited in such Funds pursuant to subsection (h)(1).

#### Instrumentalities of Two or More States

(k)(1) The Secretary of Health, Education, and Welfare may, at the request of any instrumentality of two or more States, enter into an agreement with such instrumentality for the purpose of extending the insurance system established by this title to services performed by individuals as employees of such instrumentality. Such agreement, to the extent practicable, shall be governed by the provisions of this section applicable in the case of an agreement with a State.

(2) In the case of any instrumentality of two or more States, if—  
 (A) employees of such instrumentality are in positions covered

by a retirement system of such instrumentality or of any of such States or any of the political subdivisions thereof, and

(B) such retirement system is (on, before, or after the date of enactment of this paragraph) divided into two divisions or parts, one of which is composed of positions of members of such system who are employees of such instrumentality and who desire coverage under an agreement under this section and the other of which is composed of positions of members of such system who are employees of such instrumentality and who do not desire such coverage, and

(C) it is provided that there shall be included in such division or part composed of the positions of members desiring such coverage the positions of employees of such instrumentality who become members of such system after such coverage is extended, then such retirement system shall, if such instrumentality so desires, be deemed to be a separate retirement system with respect to each such division or part. An individual who is in a position covered by a retirement system divided pursuant to the preceding sentence and who is not a member of such system but is eligible to become a member thereof shall, for purposes of this subsection, be regarded as a member of such system. Coverage under the agreement of any such individual shall be provided under the same conditions, to the extent practicable, as are applicable in the case of the States to which the provisions of subsection (d)(6)(C) apply. The position of any employee of any such instrumentality which is covered by any retirement system to which the first sentence of this paragraph is applicable shall, if such individual is ineligible to become a member of such system on the date of enactment of this paragraph or, if later, the day he first occupies such position, be deemed to be covered by the separate retirement system consisting of the positions of members of the division or part who do not desire coverage under the insurance system established under this title. Services in positions covered by a separate retirement system created pursuant to this subsection (and consisting of the positions of members who desire coverage under an agreement under this section) shall be covered under such agreement on compliance, to the extent practicable, with the same conditions as are applicable to coverage under an agreement under this section of services in positions covered by a separate retirement system created pursuant to subparagraph (C) of subsection (d)(6) or the corresponding provision of prior law (and consisting of the positions of members who desire coverage under such agreement).

(3) Any agreement with any instrumentality of two or more States entered into pursuant to this Act may, notwithstanding the provisions of subsection (d)(5)(A) and the references thereto in subsections (d)(1) and (d)(3), apply to service performed by employees of such instrumentality in any policeman's or fireman's position covered by a retirement system, but only upon compliance, to the extent practicable, with the requirements of subsection (d)(3). For the purpose of the preceding sentence, a retirement system which covers positions of policemen or firemen or both, and other positions shall, if the instrumentality concerned so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

### **Delegation of Functions**

(l) The Secretary of Health, Education, and Welfare is authorized, pursuant to agreement with the head of any Federal agency, to delegate any of his functions under this section to any officer or employee of such agency and otherwise to utilize the services and facilities of such agency in carrying out such functions, and payment therefor shall be in advance or by way of reimbursement, as may be provided in such agreement.

### **Wisconsin Retirement Fund**

(m)(1) Notwithstanding paragraph (1) of subsection (d), the agreement with the State of Wisconsin may, subject to the provisions of this subsection, be modified so as to apply to service performed by employees in positions covered by the Wisconsin retirement fund.

(2) All employees in positions covered by the Wisconsin retirement fund at any time on or after January 1, 1951, shall, for the purposes of subsection (c) only, be deemed to be a separate coverage group; except that there shall be excluded from such separate coverage group all employees in positions to which the agreement applies without regard to this subsection.

(3) The modification pursuant to this subsection shall exclude (in the case of employees in the coverage group established by paragraph (2) of this subsection) service performed by any individual during any period before he is included under the Wisconsin retirement fund.

(4) The modification pursuant to this subsection shall, if the State of Wisconsin requests it, exclude (in the case of employees in the coverage group established by paragraph (2) of this subsection) all service performed in policemen's positions, all service performed in firemen's positions, or both.

### **Certain Positions No Longer Covered by Retirement Systems**

(n) Notwithstanding subsection ( ), an agreement with any State entered into under this section prior to the date of the enactment of this subsection may, prior to January 1, 1958, be modified pursuant to subsection (c)(4) so as to apply to services performed by employees, as members of any coverage group to which such agreement already applies (and to which such agreement applied on such date of enactment), in positions (1) to which such agreement does not already apply, (2) which were covered by a retirement system on the date such agreement was made applicable to such coverage group, and (3) which, by reason of action by such State or political subdivision thereof, as may be appropriate, taken prior to the date of the enactment of this subsection, are no longer covered by a retirement system on the date such agreement is made applicable to such services.

### **Certain Employees of the State of Utah**

(o) Notwithstanding the provisions of subsection (d), the agreement with the State of Utah entered into pursuant to this section may be modified pursuant to subsection (c)(4) so as to apply to services performed for any of the following, the employees performing services for each of which shall constitute a separate coverage group: Weber Junior College, Carbon Junior College, Dixie Junior College,

Central Utah Vocational School, Salt Lake Area Vocational School, Center for the Adult Blind, Union High School (Roosevelt, Utah), Utah High School Activities Association, State Industrial School, State Training School, State Board of Education, and Utah School Employees Retirement Board. Any modification agreed to prior to January 1, 1955, may be made effective with respect to services performed by employees as members of any of such coverage groups after an effective date specified therein, except that in no case may any such date be earlier than December 31, 1950.

#### Policemen and Firemen in Certain States

(p)(1) Any agreement with the State of Alabama, California, Florida, Georgia, Hawaii, *Idaho*, Kansas, Maine, Maryland, New York, North Carolina, North Dakota, Oregon, Puerto Rico, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, or Washington entered into pursuant to this section prior to the date of enactment of this subsection may, notwithstanding the provisions of subsection (d)(5)(A) and the references thereto in subsections (d)(1) and (d)(3), be modified pursuant to subsection (c)(4) to apply to service performed by employees of such State or any political subdivision thereof in any policeman's or fireman's position covered by a retirement system in effect on or after the date of the enactment of this subsection, but only upon compliance with the requirements of subsection (d)(3). For the purposes of the preceding sentence, a retirement system which covers positions of policemen or firemen, or both, and other positions shall, if the State concerned so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

(2) A State, not otherwise listed by name in paragraph (1), shall be deemed to be a State listed in such paragraph for the purpose of extending coverage under this title to service in firemen's positions covered by a retirement system, if the governor of the State, or an official of the State designated by him for the purpose, certifies to the Secretary of Health, Education, and Welfare that the overall benefit protection of the employees in such positions would be improved by reason of the extension of such coverage to such employees. Notwithstanding the provisions of the second sentence of such paragraph (1), such firemen's positions shall be deemed a separate retirement system and no other positions shall be included in such system.

#### Time Limitation on Assessments

(q)(1) Where a State is liable for an amount due under an agreement pursuant to this section, such State shall remain so liable until the Secretary is satisfied that the amount due has been paid to the Secretary of the Treasury.

(2) Notwithstanding paragraph (1), a State shall not be liable for an amount due under an agreement pursuant to this section, with respect to the wages paid to individuals, after the expiration of the latest of the following periods—

(A) three years, three months, and fifteen days after the year in which such wages were paid, or

(B) three years after the date on which such amount became due, or

(C) three years, three months, and fifteen days after the year following the year in which this subsection is enacted, unless prior to the expiration of such period the Secretary makes an assessment of the amount due.

(3) For purposes of this subsection and section 205(c), an assessment of an amount due is made when the Secretary mails or otherwise delivers to the State a notice stating the amount he has determined to be due under an agreement pursuant to this section and the basis for such determination.

(4) An assessment of an amount due made by the Secretary after the expiration of the period specified in paragraph (2) shall nevertheless be deemed to have been made within such period if—

(A) before the expiration of such period (or, if it has previously been extended under this paragraph, of such period as so extended), the State and the Secretary agree in writing to an extension of such period (or extended period) and, subject to such conditions as may be agreed upon, the Secretary makes the assessment prior to the expiration of such extension; or

(B) within the 365 days immediately preceding the expiration of such period (or extended period) the State pays to the Secretary of the Treasury less than the correct amount due under an agreement pursuant to this section with respect to wages paid to individuals in any calendar quarters as members of a coverage group, and the Secretary of Health, Education, and Welfare makes the assessment, adjusted to take into account the amount paid by the State, no later than the 365th day after the day the State made payment to the Secretary of the Treasury; but the Secretary of Health, Education, and Welfare, shall make such assessment only with respect to the wages paid to such individuals in such calendar quarters as members of such coverage group; or

(C) pursuant to subparagraph (A) or (B) of section 205(c)(5) he includes in his records an entry with respect to wages for an individual, but only if such assessment is limited to the amount due with respect to such wages and is made within the period such entry could be made in such records under such subparagraph.

(5) If the Secretary allows a claim for a credit or refund of an overpayment by a State under an agreement pursuant to this section, with respect to wages paid or alleged to have been paid to an individual in a calendar year for services as a member of a coverage group, and if as a result of the facts on which such allowance is based there is an amount due from the State, with respect to wages paid to such individual in such calendar year for services performed as a member of a coverage group, for which amount the State is not liable by reason of paragraph (2) then notwithstanding paragraph (2) the State shall be liable for such amount due if the Secretary makes an assessment of such amount due at the time of or prior to notification to the State of the allowance of such claim. For purposes of this paragraph and paragraph (6), interest as provided for in subsection (j) shall not be included in determining the amount due.

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(6) The Secretary shall accept wage reports filed by a State under an agreement pursuant to this section or regulations of the Secretary thereunder, after the expiration of the period specified in paragraph (2) or such period as extended pursuant to paragraph (4), with respect to wages which are paid to individuals performing services as employees in a coverage group included in the agreement and for payment in connection with which the State is not liable by reasons of paragraph (2), only if the State—

(A) pays to the Secretary of the Treasury the amount due under such agreement with respect to such wages, and

(B) agrees in writing with the Secretary of Health, Education, and Welfare to an extension of the period specified in paragraph (2) with respect to wages paid to all individuals performing services as employees in such coverage group in the calendar quarters designated by the State in such wage reports as the periods in which such wages were paid. If the State so agrees, the period specified in paragraph (2), or such period as extended pursuant to paragraph (4), shall be extended until such time as the Secretary notifies the State that such wage reports have been accepted.

(7) Notwithstanding the preceding provisions of this subsection, where there is an amount due by a State under an agreement pursuant to this section and there has been a fraudulent attempt on the part of an officer or employee of the State or any political subdivision thereof to defeat or evade payment of such amount due, the State shall be liable for such amount due without regard to the provisions of paragraph (2), and the Secretary may make an assessment of such amount due at any time.

#### Time Limitations on Credits and Refunds

(r)(1) No credit or refund of an overpayment by a State under an agreement pursuant to this section with respect to wages paid or alleged to have been paid to an individual as a member of a coverage group in a calendar quarter shall be allowed after the expiration of the latest of the following periods—

(A) three years, three months, and fifteen days after the year in which occurred the calendar quarter in which such wages were paid or alleged to have been paid, or

(B) three years after the date the payment which included such overpayment became due under such agreement with respect to the wages paid or alleged to have been paid to such individual as a member of such coverage group in such calendar quarter, or

(C) two years after such overpayment was made to the Secretary of the Treasury, or

(D) three years, three months, and fifteen days after the year following the year in which this subsection is enacted, unless prior to the expiration of such period a claim for such credit or refund is filed with the Secretary of Health, Education, and Welfare by the State.

(2) A claim for a credit or refund filed by a State after the expiration of the period specified by paragraph (1) shall nevertheless be deemed to have been filed within such period if—

(A) before the expiration of such period (or, if it has previously been extended under this subparagraph, of such period as

so extended) the State and the Secretary agreed in writing to an extension of such period (or extended period) and the claim is filed with the Secretary by the State prior to the expiration of such extension; but any claim for a credit or refund valid because of this subparagraph shall be allowed only to the extent authorized by the conditions provided for in the agreement for such extension, or

(B) the Secretary deletes from his records an entry with respect to wages of an individual pursuant to the provisions of subparagraph (A), (B), or (E) of section 205(c)(5), but only with respect to the entry so deleted.

#### Review by Secretary

(s) Where the Secretary has made an assessment of an amount due by a State under an agreement pursuant to this section, disallowed a State's claim for a credit or refund of an overpayment under such agreement, or allowed a State a credit or refund of an overpayment under such agreement, he shall review such assessment, disallowance, or allowance if a written request for such review is filed with him by the State within 90 days (or within such further time as he may allow) after notification to the State of such assessment, disallowance, or allowance. On the basis of the evidence obtained by or submitted to the Secretary, he shall render a decision affirming, modifying, or reversing such assessment, disallowance, or allowance. In notifying the State of his decision, the Secretary shall state the basis therefor.

#### Review by Court

(t)(1) Notwithstanding any other provision of this title any State, irrespective of the amount in controversy, may file, within two years after the mailing to such State of the notice of any decision by the Secretary pursuant to subsection (s) affecting such State, or within such further time as the Secretary may allow, a civil action for a redetermination of the correctness of the assessment of the amount due, the disallowance of the claim for a refund or credit, or the allowance of the refund or credit, as the case may be, with respect to which the Secretary has rendered such decision. Such action shall be brought in the district court of the United States for the judicial district in which is located the capital of such State, or, if such action is brought by an instrumentality of two or more States, the principal office of such instrumentality. The judgment of the court shall be final, except that it shall be subject to review in the same manner as judgments of such court in other civil actions. Any action filed under this subsection shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

(2) Notwithstanding the provisions of section 2411 of title 28, United States Code, no interest shall accrue to a State after final judgment with respect to a credit or refund of an overpayment made under an agreement pursuant to this section.

(3) The first sentence of section 2414 of title 28, United States Code, shall not apply to final judgments rendered by district courts of the United States in civil actions filed under this subsection. In such cases, the payment of amounts due to States pursuant to such final

judgments shall be adjusted in accordance with the provisions of this section and with regulations promulgated by the Secretary.

#### **Positions Compensated Solely on a Fee Basis**

(u)(1) Notwithstanding any other provision in this section, an agreement entered into under this section may be made applicable to service performed after 1967 in any class or classes of positions compensated solely on a fee basis to which such agreement did not apply prior to 1968 only if the State specifically requests that its agreement be made applicable to such service in such class or classes of positions.

(2) Notwithstanding any other provision in this section, an agreement entered into under this section may be modified, at the option of the State, at any time after 1967, so as to exclude services performed in any class or classes of positions compensation for which is solely on a fee basis.

(3) Any modification made under this subsection shall be effective with respect to services performed after the last day of the calendar year in which the modification is agreed to by the Secretary and the State.

(4) If any class or classes of positions have been excluded from coverage under the State agreement by a modification agreed to under this subsection, the Secretary and the State may not thereafter modify such agreement so as to again make the agreement applicable with respect to such class or classes of positions.

**Sec. 219.** [Repealed.]

#### **Disability Provisions Inapplicable if Benefit Rights Impaired**

**Sec. 220.** None of the provisions of this title relating to periods of disability shall apply in any case in which their application would result in the denial of monthly benefits or a lump-sum death payment which would otherwise be payable under this title; nor shall they apply in the case of any monthly benefit or lump-sum death payment under this title if such benefit or payment would be greater without their application.

#### **Disability Determinations**

**Sec. 221.** (a) In the case of any individual, the determination of whether or not he is under a disability (as defined in section 216(i) or 223(d)) and of the day such disability began, and the determination of the day on which such disability ceases, shall, except as provided in subsection (g), be made by a State agency pursuant to an agreement entered into under subsection (b). Except as provided in subsections (c) and (d), any such determinations shall be the determination of the Secretary for purposes of this title.

(b) The Secretary shall enter into an agreement with each State which is willing to make such an agreement under which the State agency or agencies administering the State plan approved under the Vocational Rehabilitation Act, or any other appropriate State agency

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or agencies, or both, will make the determinations referred to in subsection (a) with respect to all individuals in such State, or with respect to such class or classes of individuals in the State as may be designated in the agreement at the State's request.

(c) The Secretary may on his own motion review a determination, made by a State agency pursuant to an agreement under this section, that an individual is under a disability (as defined in section 216(i) or 223(d)) and, as a result of such review, may determine that such individual is not under a disability (as so defined) or that such disability began on a day later than that determined by such agency, or that such disability ceased on a day earlier than that determined by such agency.

(d) Any individual dissatisfied with any determination under subsection (a), (c), or (g) shall be entitled to a hearing thereon by the Secretary to the same extent as is provided in section 205(b) with respect to decisions of the Secretary, and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).

(e) Each State which has an agreement with the Secretary under this section shall be entitled to receive from the Trust Funds, in advance or by way of reimbursement, as may be mutually agreed upon, the cost to the State of carrying out the agreement under this section. The Secretary shall from time to time certify such amount as is necessary for this purpose to the Managing Trustee, reduced or increased, as the case may be, by any sum (for which adjustment hereunder has not previously been made) by which the amount certified for any prior period was greater or less than the amount which should have been paid to the State under this subsection for such period; and the Managing Trustee, prior to audit or settlement by the General Accounting Office, shall make payment from the Trust Funds at the time or times fixed by the Secretary, in accordance with such certification. Appropriate adjustments between the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund with respect to the payments made under this subsection shall be made in accordance with paragraph (1) of subsection (g) of section 201 (but taking into account any refunds under subsection (f) of this section) to insure that the Federal Disability Trust Fund is charged with all expenses incurred which are attributable to the administration of section 223 and the Federal Old-Age and Survivors Insurance Trust Fund is charged with all other expenses.

(f) All money paid to a State under this section shall be used solely for the purposes for which it is paid; and any money so paid which is not used for such purposes shall be returned to the Treasury of the United States for deposit in the Trust Funds.

(g) In the case of individuals in a State which has no agreement under subsection (b), in the case of individuals outside the United States, and in the case of any class or classes of individuals not included in an agreement under subsection (b), the determinations referred to in subsection (a) shall be made by the Secretary in accordance with regulations prescribed by him.

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## Rehabilitation Services

### Referral for Rehabilitation Services

**Sec. 222.** (a) It is hereby declared to be the policy of the Congress that disabled individuals applying for a determination of disability, and disabled individuals who are entitled to child's insurance benefits, widow's insurance benefits, or widower's insurance benefits, shall be promptly referred to the State agency or agencies administering or supervising the administration of the State plan approved under the Vocational Rehabilitation Act for necessary vocational rehabilitation services, to the end that the maximum number of such individuals may be rehabilitated into productive activity.

### Deduction on Account of Refusal To Accept Rehabilitation Services

(b)(1) Deductions, in such amounts and at such time or times as the Secretary shall determine, shall be made from any payment or payments under this title to which an individual is entitled, until the total of such deductions equals such individual's benefit or benefits under sections 202 and 223 for any month in which such individual, if a child who has attained the age of eighteen and is entitled to child's insurance benefits, a widow, *widower* or surviving divorced wife who has not attained age 60, [a widower who has not attained age 62,]<sup>1</sup> or an individual entitled to disability insurance benefits, refuses without good cause to accept rehabilitation services available to him under a State plan approved under the Vocational Rehabilitation Act. Any individual who is a member or adherent of any recognized church or religious sect which teaches its member or adherents to rely solely, in the treatment and cure of any physical or mental impairment, upon prayer or spiritual means through the application and use of the tenets or teachings of such church or sect, and who, solely because of his adherence to the teachings or tenets of such church, or sect, refuses to accept rehabilitation services available to him under a State plan approved under the Vocational Rehabilitation Act, shall, for the purposes of the first sentence of this subsection, be deemed to have done so with good cause.

(2) Deductions shall be made from any child's insurance benefit to which a child who has attained the age of eighteen is entitled or from any mother's insurance benefit to which a person is entitled, until the total of such deductions equals such child's insurance benefit or benefits or such mother's insurance benefit or benefits under section 202 for any month in which such child or person entitled to mother's insurance benefits is married to an individual who is entitled to disability insurance benefits and in which such individual refuses to accept rehabilitation services and a deduction, on account of such refusal, is imposed under paragraph (1). If both this paragraph and paragraph (3) are applicable to a child's insurance benefit for any month, only an amount equal to such benefit shall be deducted.

<sup>1</sup> Applies to benefits payable under section 202 for months after December 1971, except that in the case of an individual not entitled to a benefit for December 1971, benefits will be payable only on the basis of an application filed in or after the month of enactment.

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(3) Deductions shall be made from any wife's, husband's, or child's insurance benefit, based on the wages and self-employment income of an individual entitled to disability insurance benefits, to which a wife, divorced wife, husband, or child is entitled, until the total of such deductions equal such wife's, husband's, or child's insurance benefit or benefits under section 202 for any month in which the individual, on the basis of whose wages and self-employment income such benefit was payable, refuses to accept rehabilitation services and deductions, on account of such refusal, are imposed under paragraph (1).

(4) The provisions of paragraph (1) shall not apply to any child entitled to benefits under section 202(d), if he has attained the age of 18 but has not attained the age of 22, for any month during which he is a full-time student (as defined and determined under section 202(d)).

#### Period of Trial Work

(c)(1) The term "period of trial work", with respect to an individual entitled to benefits under section 223 or 202(d), means a period of months beginning and ending as provided in paragraphs (3) and (4).

(2) For purposes of sections 216(i) and 223, any services rendered by an individual during a period of trial work shall be deemed not to have been rendered by such individual in determining whether his disability has ceased in a month during such period. For purposes of this subsection the term "services" means activity which is performed for remuneration or gain or is determined by the Secretary to be of a type normally performed for remuneration or gain.

(3) A period of trial work for any individual shall begin with the month in which he becomes entitled to disability insurance benefits, or, in the case of an individual entitled to benefits under section 202(d) who has attained the age of eighteen, with the month in which he becomes entitled to such benefits or the month in which he attains the age of eighteen, whichever is later. Notwithstanding the preceding sentence, no period of trial work may begin for any individual prior to the beginning of the month following the month in which this paragraph is enacted; and no such period may begin for an individual in a period of disability of such individual in which he had a previous period of trial work.

(4) A period of trial work for any individual shall end with the close of whichever of the following months is the earlier:

(A) the ninth month, beginning on or after the first day of such period, in which the individual renders services (whether or not such nine months are consecutive); or

(B) the month in which his disability (as defined in section 223(d)) ceases (as determined after application of paragraph (2) of this subsection).

(5) In the case of an individual who becomes entitled to benefits under section 223 for any month as provided in clause (ii) of subsection (a) (1) of such section, the preceding provisions of this subsection shall not apply with respect to services in any month beginning with the first month for which he is so entitled and ending with the first month thereafter for which he is not entitled to benefits under section 223.

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### Costs of Rehabilitation Services From Trust Funds

(d)(1) For the purpose of making vocational rehabilitation services more readily available to disabled individuals who are—

- (A) entitled to disability insurance benefits under section 223, or
- (B) entitled to child's insurance benefits under section 202(d) after having attained age 18 (and are under a disability), or
- (C) entitled to widow's insurance benefits under section 202(e) prior to attaining age 60, or

(D) entitled to widower's insurance benefits under section 202(f) prior to attaining age [62] 60<sup>1</sup>, to the end that savings will result to the Trust Funds as a result of rehabilitating the maximum number of such individuals into productive activity, there are authorized to be transferred from the Trust Funds such sums as may be necessary to enable the Secretary to pay the costs of vocational rehabilitation services for such individuals (including (i) services during their waiting periods, and (ii) so much of the expenditures for the administration of any State plan as is attributable to carrying out this subsection); except that the total amount so made available pursuant to this subsection [in any fiscal year may not exceed 1 percent of the total of the benefits under section 202(d) for children who have attained age 18 and are under a disability] *may not exceed—*

- (i) 1 percent in the fiscal year ending June 30, 1971,
- (ii) 1.25 percent in the fiscal year ending June 30, 1972,
- (iii) 1.5 percent in the fiscal year ending June 30, 1973, and

*thereafter,*

*of the total of the benefits under section 202(d) for children who have attained age 18 and are under a disability, the benefits under section 202(e) for widows and surviving divorced wives who have not attained age 60 and are under a disability, the benefits under section 202(f) for widowers who have not attained age [62] 60, and the benefits under section 223, which were certified for payment in the preceding year. The selection of individuals (including the order in which they shall be selected) to receive such services shall be made in accordance with criteria formulated by the Secretary which are based upon the effect the provision of such services would have upon the Trust Funds.*

(2) In the case of each State which is willing to do so, such vocational rehabilitation services shall be furnished under a State plan for vocational rehabilitation services which—

(A) has been approved under section 5 of the Vocational Rehabilitation Act,

(B) provides that, to the extent funds provided under this subsection are adequate for the purpose, such services will be furnished, to any individual in the State who meets the criteria prescribed by the Secretary pursuant to paragraph (1), with reasonable promptness and in accordance with the order of selection determined under such criteria, and

(C) provides that such services will be furnished to any individual without regard to (i) his citizenship or place of residence,

<sup>1</sup> Applies to benefits payable under section 202 for months after December 1971, except that in the case of an individual not entitled to a benefit as of December 1971, benefits will be payable only on the basis of an application filed in or after the month of enactment.

(ii) his need for financial assistance except as provided in regulations of the Secretary in the case of maintenance during rehabilitation, or (iii) any order of selection which would otherwise be followed under the State plan pursuant to section 5(a)(4) of the Vocational Rehabilitation Act.

(3) In the case of any State which does not have a plan which meets the requirements of paragraph (2), the Secretary may provide such services by agreement or contract with other public or private agencies, organizations, institutions, or individuals.

(4) Payments under this subsection may be made in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments.

(5) Money paid from the Trust Funds under this subsection to pay the costs of providing services to individuals who are entitled to benefits under section 223 (including services during their waiting periods), or who are entitled to benefits under section 202(d) on the basis of the wages and self-employment income of such individuals shall be charged to the Federal Disability Insurance Trust Fund, and all other money paid out from the Trust Funds under this subsection shall be charged to the Federal Old-Age and Survivors Insurance Trust Fund. The Secretary shall determine according to such methods and procedures as he may deem appropriate—

(A) the total cost of the services provided under this subsection, and

(B) subject to the provisions of the preceding sentence, the amount of such cost which should be charged to each of such Trust Funds.

(6) For the purposes of this subsection the term "vocational rehabilitation services" shall have the meaning assigned to it in the Vocational Rehabilitation Act, except that such services may be limited in type, scope, or amount in accordance with regulations of the Secretary designed to achieve the purposes of this subsection.

## Disability Insurance Benefit Payments

### Disability Insurance Benefits

**Sec. 223.** (a)(1) Every individual who—

(A) is insured for disability insurance benefits (as determined under subsection (c)(1)),

(B) has not attained the age of sixty-five,

(C) has filed application for disability insurance benefits, and

(D) is under a disability (as defined in subsection (d)) shall be entitled to a disability insurance benefit (i) for each month beginning with the first month after his waiting period (as defined in subsection (c)(2)) in which he becomes so entitled to such insurance benefits, or (ii) for each month beginning with the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was entitled to disability insurance benefits which terminated, or had a period of disability (as defined in section 216(i)) which ceased, within the sixty-month period preceding the first month in which he is under such disability, and ending with the month preceding whichever of the following months is the earliest:

the month in which he dies, the month in which he attains age 65, or the third month following the month in which his disability ceases. No payment under this paragraph may be made to an individual who would not meet the definition of disability in subsection (d) except for paragraph (1)(B) thereof for any month in which he engages in substantial gainful activity, and no payment may be made for such month under subsection (b), (c), or (d) of section 202 to any person on the basis of the wages and self-employment income of such individual. *In the case of a deceased individual, the requirement of subparagraph (C) may be satisfied by an application for benefits filed with respect to such individual within 3 months after the month in which he died.*<sup>1</sup>

(2) Except as provided in section 202(q), such individual's disability insurance benefit for any month shall be equal to his primary insurance amount for such month determined under section 215 (or under section 202(a)(3))<sup>2</sup> as though he had attained age 62 [(if a woman) or age 65 (if a man)]<sup>3</sup> in—

(A) the first month of his waiting period, or

(B) in any case in which clause (ii) of paragraph (1) of this subsection is applicable, the first month for which he becomes entitled to such disability insurance benefits,

and as though he had become entitled to old-age insurance benefits in the month in which [he filed his application for disability insurance benefits and was] *the application for disability insurance benefits was filed and he was* entitled to an old-age insurance benefit for each month for which (pursuant to subsection (b)) he was entitled to a disability insurance benefit. For the purposes of the preceding sentence, [in the case of a woman] *in the case of an individual*<sup>3</sup> who attained age 62 in or before the first month referred to in subparagraph (A) or (B) of such sentence, as the case may be, the elapsed years referred to in section 215(b)(3) shall not include the year in which [she] *he*<sup>3</sup> attained age 62, or any year thereafter.

#### Filing of Application

(b) An application for disability insurance benefits filed before the first month in which the applicant satisfies the requirements for such benefits (as prescribed in subsection (a)(1)) shall be deemed a valid application only if the applicant satisfies the requirements for such benefits before the Secretary makes a final decision on the application. If, upon final decision by the Secretary, or decision upon judicial review thereof, such applicant is found to satisfy such requirements, the application shall be deemed to have been filed in such first month. An individual who would have been entitled to a disability insurance benefit for any month had he filed application therefor before the end of such month shall be entitled to such benefit for such month [if he files such application] *if such application is filed*<sup>1</sup> before the end of the 12th month immediately succeeding such month.

<sup>1</sup> Applies in case of deaths occurring after Dec. 31, 1969. Applications with respect to deaths occurring after Dec. 31, 1969, but before date of enactment which are filed within 3 months in or after the month of enactment shall be deemed filed in the month in which such death occurred.

<sup>2</sup> Applies to benefits for months after December 1971.

<sup>3</sup> Applies only in the case of a man who attains (or would attain) age 62 after December 1973.

## Definitions of Insured Status and Waiting Period

(c) For purposes of this section—

(1) An individual shall be insured for disability insurance benefits in any month if—

(A) he would have been a fully insured individual (as defined in section 214) had he attained age 62 [(if a woman) or age 65 (if a man)]<sup>1</sup> and filed application for benefits under section 202(a) on the first day of such month, and

(B)(i) he had not less than 20 quarters of coverage during the 40-quarter period which ends with the quarter in which such month occurred, or

(ii) if such month ends before the quarter in which he attains (or would attain) age 31, not less than one-half (and not less than 6) of the quarters during the period ending with the quarter in which such month occurred and beginning after he attained the age of 21 were quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter were quarters of [coverage. For purposes] coverage; except that the provisions of subparagraph (B) of this paragraph shall not apply in the case of an individual who is blind (within the meaning of "blindness" as defined in section 216(i)(1)). For purposes<sup>2</sup> of subparagraph (B) of this paragraph, when the number of quarters in any period is an odd number, such number shall be reduced by one, and a quarter shall not be counted as part of any period if any part of such quarter was included in a period of disability unless such quarter was a quarter of coverage.

(2) The term "waiting period" means, in the case of any application for disability insurance benefits, the earliest period of [six] five<sup>3</sup> consecutive calendar months—

(A) throughout which the individual [who files such application] with respect to whom such application is filed<sup>4</sup> has been under a disability, and

(B)(i) which begins not earlier than with the first day of the [eighteenth] seventeenth<sup>5</sup> month before the month in which such application is filed if such individual is insured for disability insurance benefits in such [eighteenth] seventeenth<sup>5</sup> month, or (ii) if he is not so insured in such month, which begins not earlier than the first day of the first month after such [eighteenth] seventeenth<sup>5</sup> month in which he is so insured.

<sup>1</sup> Applies only in the case of a man who attains (or would attain) age 62 after December 1973.

<sup>2</sup> Effective with respect to applications for disability insurance benefits under section 223 of the act, and for disability determinations under section 216(i) of such act, filed—

(1) in or after the month in which this act is enacted, or

(2) before the month in which this act is enacted if—

(A) notice of the final decision of the Secretary of Health, Education, and Welfare has not been given to the applicant before such month; or

(B) the notice referred to in subparagraph (A) has been so given before such month but a civil action with respect to such final decision is commenced under section 205(g) of the act (whether before, in, or after such month) and the decision in such civil action has not become final before such month; except that no monthly benefits under title II of the act shall be payable or increased by reason of the amendments made by this section for months before January 1972.

<sup>3</sup> See footnote 2 on page (38).

<sup>4</sup> Applies in case of deaths occurring after Dec. 31, 1969. Applications with respect to deaths occurring after Dec. 31, 1969, but before date of enactment which are filed within 3 months in or after the month of enactment shall be deemed filed in the month in which such death occurred.

Notwithstanding the preceding provisions of this paragraph, no waiting period may begin for any individual before January 1, 1957.

#### Definition of Disability

(d)(1) The term "disability" means—

(A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or

(B) in the case of an individual who has attained the age of 55 and is blind (within the meaning of "blindness" as defined in section 216(i)(1)), inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

(2) For purposes of paragraph (1)(A)—

(A) an individual (except a widow, surviving divorced wife, or widower for purposes of section 202 (e) or (f)) shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

(B) A widow, surviving divorced wife, or widower shall not be determined to be under a disability (for purposes of section 202 (e) or (f)) unless his or her physical or mental impairment or impairments are of a level of severity which under regulations prescribed by the Secretary is deemed to be sufficient to preclude an individual from engaging in any gainful activity.

(3) For purposes of this subsection, a "physical or mental impairment" is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

(4) The Secretary shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. Notwithstanding the provisions of paragraph (2), an individual whose services or earnings meet such criteria shall, except for purposes of section 222(c), be found not to be disabled.

(5) An individual shall not be considered to be under a disability unless he furnishes such medical and other evidence of the existence thereof as the Secretary may require.



## Reduction of Benefits Based on Disability on Account of Receipt of Workmen's Compensation

**Sec. 224.** (a) If for any month prior to the month in which an individual attains the age of 62—

(1) such individual is entitled to benefits under section 223, and

(2) such individual is entitled for such month, under a workmen's compensation law or plan of the United States or a State to periodic benefits for a total or partial disability (whether or not permanent), and the Secretary has, in a prior month, received notice of such entitlement for such month,

the total of his benefits under section 223 for such month and of any benefits under section 202 for such month based on his wages and self-employment income shall be reduced (but not below zero) by the amount by which the sum of—

(3) such total of benefits under sections 223 and 202 for such month, and

(4) such periodic benefits payable (and actually paid) for such month to such individual under the workmen's compensation law or plan,

exceeds the higher of—

(5) 80 per centum of his "average current earnings", or

(6) the total of such individual's disability insurance benefits under section 223 for such month and of any monthly insurance benefits under section 202 for such month based on his wages and self-employment income, prior to reduction under this section.

In no case shall the reduction in the total of such benefits under sections 223 and 202 for a month (in a continuous period of months) reduce such total below the sum of—

(7) the total of the benefits under sections 223 and 202, after reduction under this section, with respect to all persons entitled to benefits on the basis of such individual's wages and self-employment income for such month which were determined for such individual and such persons for the first month for which reduction under this section was made (or which would have been so determined if all of them had been so entitled in such first month), and

(8) any increase in such benefits with respect to such individual and such persons, before reduction under this section, which is made effective for months after the first month for which reduction under this section is made.

For purposes of clause (5), an individual's average current earnings means the [larger] *largest*<sup>1</sup> of (A) the average monthly wage used for purposes of computing his benefits under section 223, [or] (B) one-sixtieth of the total of his wages and self-employment income (computed without regard to the limitations specified in sections 209(a) and 211(b)(1)) for the five consecutive calendar years after 1950 for which such wages and self-employment income were highest, or (C) *one-twelfth of the total of his wages and self-employment income (computed without regard to the limitations specified in sections 209(a) and 211(b)(1)) for the calendar year in which he had the highest such wages and income during the period consisting of the calendar year in which he became disabled (as defined in section 223(d)) and the five years preceding*

<sup>1</sup> Applies to benefits for months after December 1971.

that year.<sup>1</sup> In any case where an individual's wages and self-employment income reported to the Secretary for a calendar year reach the limitations specified in sections 209(a) and 211(b)(1), the Secretary under regulations shall estimate the total of such wages and self-employment income for purposes of **[clause (B)] clauses (B) and (C)**<sup>1</sup> of the preceding sentence on the basis of such information as may be available to him indicating the extent (if any) by which such wages and self-employment income exceed such limitations.

(b) If any periodic benefit under a workmen's compensation law or plan is payable on other than a monthly basis (excluding a benefit payable as a lump sum except to the extent that it is a commutation of, or a substitute for, periodic payments), the reduction under this section shall be made at such time or times and in such amounts as the Secretary finds will approximate as nearly as practicable the reduction prescribed by subsection (a).

(c) Reduction of benefits under this section shall be made after any reduction under subsection (a) of section 203, but before deductions under such section and under section 222(b).

(d) The reduction of benefits required by this section shall not be made if the workmen's compensation law or plan under which a periodic benefit is payable provides for the reduction thereof when anyone is entitled to benefits under this title on the basis of the wages and self-employment income of an individual entitled to benefits under section 223.

(e) If it appears to the Secretary that an individual may be eligible for periodic benefits under a workmen's compensation law or plan which would give rise to reduction under this section, he may require, as a condition of certification for payment of any benefits under section 223 to any individual for any month and of any benefits under section 202 for such month based on such individual's wages and self-employment income, that such individual certify (i) whether he has filed or intends to file any claim for such periodic benefits, and (ii) if he has so filed, whether there has been a decision on such claim. The Secretary may, in the absence of evidence to the contrary, rely upon such a certification by such individual that he has not filed and does not intend to file such a claim, or that he has so filed and no final decision thereon has been made, in certifying benefits for payment pursuant to section 205(i).

(f)(1) In the second calendar year after the year in which reduction under this section in the total of an individual's benefits under section 223 and any benefits under section 202 based on his wages and self-employment income was first required (in a continuous period of months), and in each third year thereafter, the Secretary shall redetermine the amount of such benefits which are still subject to reduction under this section; but such redetermination shall not result in any decrease in the total amount of benefits payable under this title on the basis of such individual's wages and self-employment income. Such redetermined benefit shall be determined as of, and shall become effective with, the January following the year in which such redetermination was made.

(2) In making the redetermination required by paragraph (1), the individual's average current earnings (as defined in subsection (a)) shall be deemed to be the product of his average current earnings as initially determined under subsection (a) and the ratio of (i) the

<sup>1</sup> Applies to benefits for months after December 1971.

average of the taxable wages of all persons for whom taxable wages were reported to the Secretary for the first calendar quarter of the calendar year in which such redetermination is made, to (ii) the average of the taxable wages of such persons reported to the Secretary for the first calendar quarter of the taxable year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability). Any amount determined under the preceding sentence which is not a multiple of \$1 shall be reduced to the next lower multiple of \$1.

(g) Whenever a reduction in the total of benefits for any month based on an individual's wages and self-employment income is made under this section, each benefit, except the disability insurance benefit, shall first be proportionately decreased, and any excess of such reduction over the sum of all such benefits other than the disability insurance benefit shall then be applied to such disability insurance benefit.

### Suspension of Benefits Based on Disability

**Sec. 225.** If the Secretary, on the basis of information obtained by or submitted to him, believes that an individual entitled to benefits under section 223, or that a child who has attained the age of eighteen and is entitled to benefits under section 202(d), or that a widow or surviving divorced wife who has not attained age 60 and is entitled to benefits under section 202(e), or that a widower who has not attained age [62] 60<sup>1</sup> and is entitled to benefits under section 202(f), may have ceased to be under a disability, the Secretary may suspend the payment of benefits under such section 202(d), 202(e), 202(f), or 223, until it is determined (as provided in section 221) whether or not such individual's disability has ceased or until the Secretary believes that such disability has not ceased. In the case of any individual whose disability is subject to determination under an agreement with a State under section 221(b), the Secretary shall promptly notify the appropriate State of his action under this section and shall request a prompt determination of whether such individual's disability has ceased. For purposes of this section, the term "disability" has the meaning assigned to such term in section 223(d). Whenever the benefits of an individual entitled to a disability insurance benefit are suspended for any month, the benefits of any individual entitled thereto under subsection (b), (c), or (d) of section 202, on the basis of the wages and self-employment income of such individual, shall be suspended for such month. The first sentence of this section shall not apply to any child entitled to benefits under section 202(d), if he has attained the age of 18 but has not attained the age of 22, for any month during which he is a full-time student (as defined and determined under section 202(d)).

### Entitlement to Hospital Insurance Benefits

#### Sec. 226.

(a)(1) Every individual who—  
 [(1)](A) has attained age 65, and  
 [(2)](B) is entitled to monthly insurance benefits under section 202 or is a qualified railroad retirement beneficiary,

<sup>1</sup> Applies to benefits payable under section 202 for months after December 1971, except that in the case of an individual not entitled to a benefit for December 1971, benefits will be payable only on the basis of an application filed in or after the month of enactment.

shall be entitled to hospital insurance benefits under part A of title XVIII for each month for which he meets the condition specified in subparagraph [(2)](B), beginning with the first month after June 1966 for which he meets the conditions specified in subparagraphs [(1)](A) and [(2)](B).

(2) *Every individual who—*

(A) *has not attained age 65, but*

(B) *(i) has been entitled to disability insurance benefits under section 223 for not less than 24 consecutive months, or (ii) has been entitled for not less than 24 consecutive months to child's insurance benefits under section 202(d) by reason of a disability (as defined in section 223(d)) which began before he attained age 22, or (iii) has been entitled for not less than 24 consecutive months to widow's insurance benefits under section 202(e) or widower's insurance benefits under section 202(f) by reason of a disability (as defined in section 223(d)), or (iv) has been for not less than 24 consecutive months a disabled qualified railroad retirement beneficiary, within the meaning of section 22 of the Railroad Retirement Act of 1937,*  
*shall be entitled to hospital insurance benefits under part A of title XVIII for each month beginning with the later of (I) July 1972 or (II) the twenty-fifth consecutive month of his entitlement described in subparagraph (B), and ending with the month in which his entitlement described in subparagraph (B) ceases or, if earlier, with the month before the month in which he attains age 65.*

(b) For purposes of subsection (a)—

(1) entitlement of an individual to hospital insurance benefits for a month shall consist of entitlement to have payment made under, and subject to the limitations in, part A of title XVIII on his behalf for inpatient hospital services, post-hospital extended care services, and post-hospital home health services (as such terms are defined in part C of title XVIII) furnished him in the United States (or outside the United States in the case of inpatient hospital services furnished under the conditions described in section 1814(f)) during such month; except that (A) no such payment may be made for post-hospital extended care services furnished before January 1967, and (B) no such payment may be made for post-hospital extended care services or post-hospital home health services unless the discharge from the hospital required to qualify such services for payment under part A of title XVIII occurred (i) after June 30, 1966, or on or after the first day of the month in which he attains age 65, whichever is later, or (ii) if he was entitled to hospital insurance benefits pursuant to paragraph (2) of subsection (a), at a time when he was so entitled; and

(2) an individual shall be deemed entitled to monthly insurance benefits under section 202 or section 223, or to be a qualified railroad retirement beneficiary, for the month in which he died if he would have been entitled to such benefits, or would have been a qualified railroad retirement beneficiary, for such month had he died in the next month.

(c) For purposes of this section, the term "qualified railroad retirement beneficiary" means an individual whose name has been

certified to the Secretary by the Railroad Retirement Board under section 21 or section 22 of the Railroad Retirement Act of 1937. An individual shall cease to be a qualified railroad retirement beneficiary at the close of the month preceding the month which is certified by the Railroad Retirement Board as the month in which he ceased to meet the requirements of section 21 or section 22 of the Railroad Retirement Act of 1937.

(d)(1) For purposes of determining entitlement to hospital insurance benefits under subsection (a)(2) in the case of widows and widowers described in subparagraph (B) (iii) thereof—

(A) the term "age 60" in sections 202(e)(1)(B)(ii), 202(e)(5), 202(f)(1)(B)(ii), and 202(f)(6) shall be deemed to read "age 65"; and

(B) the phrase "before she attained age 60" in the matter following subparagraph (F) of section 202(e)(1) shall be deemed to read "based on a disability".

(2) For purposes of determining entitlement to hospital insurance benefits under subsection (a)(2) in the case of an individual under age 65 who is entitled to old-age insurance benefits, and who was entitled to widow's insurance benefits or widower's insurance benefits based on disability for the month before the first month in which such individual was so entitled to old-age insurance benefits (but ceased to be entitled to such widow's or widower's insurance benefits upon becoming entitled to such old-age insurance benefits), such individual shall be deemed to have continued to be entitled to such widow's insurance benefits or widower's insurance benefits for and after such first month.

[(d)] (e) For entitlement to hospital insurance benefits in the case of certain uninsured individuals, see section 103 of the Social Security Amendments of 1965.

### Transitional Insured Status

Sec. 227. (a) In the case of any individual who attains the age of 72 before 1969 but who does not meet the requirements of section 214(a), the 6 quarters of coverage referred to in [so much of paragraph (1) of section 214(a) as follows clause (C)] paragraph (1) of section 214(a)<sup>1</sup> shall, instead, be 3 quarters of coverage for purposes of determining entitlement of such individual to benefits under section 202(a), and of his wife to benefits under section 202(b), but, in the case of such wife, only if she attains the age of 72 before 1969 and only with respect to wife's insurance benefits under section 202(b) for and after the month in which she attains such age. For each month before the month in which any such individual meets the requirements of section 214(a), the amount of his old-age insurance benefit shall, notwithstanding the provisions of section 202(a), be [ \$48.30 ] \$50.80<sup>2</sup> and the amount of the wife's insurance benefit of his wife shall, notwithstanding the provisions of section 202(b), be [ \$24.20 ] \$25.40.<sup>3</sup>

<sup>1</sup> Applies only in the case of a man who attains (or would attain) age 62 after December 1973.

<sup>2</sup> Applies to benefits for months after May 1972 (sec. 101(h)). Effective Jan. 1, 1974, sections 227 and 228 of such Act are amended by striking out "\$50.80", wherever it appears and inserting in lieu thereof "the larger of \$50.80 or the amount most recently established in lieu thereof under section 215(l)", and by striking out "\$25.40" wherever it appears and inserting in lieu thereof "the larger of \$25.40 or the amount most recently established in lieu thereof under section 215(l)".

(b) In the case of any individual who has died, who does not meet the requirements of section 214(a), and whose widow attains age 72 before 1969, the 6 quarters of coverage referred to in paragraph (3) of section 214(a) and in [so much of paragraph (1) thereof as follows clause (C)] *paragraph (1) thereof*<sup>1</sup> shall, for purposes of determining her entitlement to widow's insurance benefits under section 202(e), instead be—

- (1) 3 quarters of coverage if such widow attains the age of 72 in or before 1966,
- (2) 4 quarters of coverage if such widow attains the age of 72 in 1967, or
- (3) 5 quarters of coverage if such widow attains the age of 72 in 1968.

The amount of her widow's insurance benefit for each month shall, notwithstanding the provisions of section 202(e) (and section 202(m)), be ~~[\$48.30]~~ \$50.80.<sup>1</sup>

(c) In the case of any individual who becomes, or upon filing application therefor would become, entitled to benefits under section 202(a) by reason of the application of subsection (a) of this section, who dies, and whose widow attains the age of 72 before 1969, such deceased individual shall be deemed to meet the requirements of subsection (b) of this section for purposes of determining entitlement of such widow to widow's insurance benefits under section 202(e).

### Benefits at Age 72 for Certain Uninsured Individuals

#### Eligibility

Sec. 228. (a) Every individual who—

- (1) has attained the age of 72,
- (2)(A) attained such age before 1968, or (B) has not less than 3 quarters of coverage, whenever acquired, for each calendar year elapsing after 1966 and before the year in which he attained such age,
- (3) is a resident of the United States (as defined in subsection (e)), and is (A) a citizen of the United States or (B) an alien lawfully admitted for permanent residence who has resided in the United States (as defined in section 210(i)) continuously during the 5 years immediately preceding the month in which he files application under this section, and

(4) has filed application for benefits under this section, shall (subject to the limitations in this section) be entitled to a benefit under this section for each month beginning with the first month after September 1966 in which he becomes so entitled to such benefits and ending with the month preceding the month in which he dies. No application under this section which is filed by an individual more than 3 months before the first month in which he meets the requirements of paragraphs (1), (2), and (3) shall be accepted as an application for purposes of this section.

#### Benefit Amount

(b)(1) Except as provided in paragraph (2), the benefit amount to which an individual is entitled under this section for any month shall be ~~[\$48.30]~~ \$50.80.

<sup>1</sup> See footnote 2 on p. 169.

(2) If both husband and wife are entitled (or upon application would be entitled) to benefits under this section for any month, the amount of the husband's benefit for such month shall be **[\$48.30]** ~~\$50.80~~<sup>1</sup> and the amount of the wife's benefit for such month shall be **[\$24.20]** ~~\$25.40~~<sup>1</sup>.

#### Reduction for Governmental Pension System Benefits

(c)(1) The benefit amount of any individual under this section for any month shall be reduced (but not below zero) by the amount of any periodic benefit under a governmental pension system for which he is eligible for such month.

(2) In the case of a husband and wife only one of whom is entitled to benefits under this section for any month, the benefit amount, after any reduction under paragraph (1), shall be further reduced (but not below zero) by the excess (if any) of (A) the total amount of any periodic benefits under governmental pension systems for which the spouse who is not entitled to benefits under this section is eligible for such month, over (B) **[\$24.20]** ~~\$25.40~~<sup>1</sup>.

(3) In the case of a husband and wife both of whom are entitled to benefits under this section for any month—

(A) the benefit amount of the wife, after any reduction under paragraph (1), shall be further reduced (but not below zero) by the excess (if any) of (i) the total amount of any periodic benefits under governmental pension systems for which the husband is eligible for such month, over (ii) **[\$48.30]** ~~\$50.80~~<sup>1</sup> and

(B) the benefit amount of the husband, after any reduction under paragraph (1), shall be further reduced (but not below zero) by the excess (if any) of (i) the total amount of any periodic benefits under governmental pension systems for which the wife is eligible for such month, over (ii) **[\$24.20]** ~~\$25.40~~<sup>1</sup>.

(4) For purposes of this subsection, in determining whether an individual is eligible for periodic benefits under a governmental pension system—

(A) such individual shall be deemed to have filed application for such benefits,

(B) to the extent that entitlement depends on an application by such individual's spouse, such spouse shall be deemed to have filed application, and

(C) to the extent that entitlement depends on such individual or his spouse having retired, such individual and his spouse shall be deemed to have retired before the month for which the determination of eligibility is being made.

(5) For purposes of this subsection, if any periodic benefit is payable on any basis other than a calendar month, the Secretary shall allocate the amount of such benefit to the appropriate calendar months.

<sup>1</sup> Applies to benefits for months after May 1972 (sec. 101(h)). Effective Jan. 1, 1974, sections 227 and 228 of such Act are amended by striking out "\$50.80" wherever it appears and inserting in lieu thereof "the larger of \$50.80 or the amount most recently established in lieu thereof under section 215(i)", and by striking out "\$25.40" wherever it appears and inserting in lieu thereof "the larger of \$25.40 or the amount most recently established in lieu thereof under section 215(i)".

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(6) If, under the foregoing provisions of this section, the amount payable for any month would be less than \$1, such amount shall be reduced to zero. In the case of a husband and wife both of whom are entitled to benefits under this section for the month, the preceding sentence shall be applied with respect to the aggregate amount so payable for such month.

(7) If any benefit amount computed under the foregoing provisions of this section is not a multiple of \$0.10, it shall be raised to the next higher multiple of \$0.10.

(8) Under regulations prescribed by the Secretary, benefit payments under this section to an individual (or aggregate benefit payments under this section in the case of a husband and wife) of less than \$5 may be accumulated until they equal or exceed \$5.

**Suspension for Months in Which Cash Payments Are Made Under Public Assistance**

(d) The benefit to which any individual is entitled under this section for any month shall not be paid for such month if—

(1) such individual *receives aid or assistance in the form of money payments in such month under a State plan approved under title I, X, XIV, or XVI, or part A of title IV* *receives payments with respect to such month pursuant to title XX or part A or part B of title XXI, or*

(2) such individual's husband or wife receives such aid or assistance in such month, and under the State plan the needs of such individual were taken into account in determining eligibility for (or amount of) such aid or assistance, unless the State agency administering or supervising the administration of such plan notifies the Secretary, at such time and in such manner as may be prescribed in accordance with regulations of the Secretary, that such payments to such individual (or such individual's husband or wife) under such plan are being terminated with the payment or payments made in such month.

**Suspension Where Individual Is Residing Outside the United States**

(e) The benefit to which any individual is entitled under this section for any month shall not be paid if, during such month, such individual is not a resident of the United States. For purposes of this subsection, the term "United States" means the 50 States and the District of Columbia.

**Treatment as Monthly Insurance Benefits**

(f) For purposes of subsections (t) and (u) of section 202, and of section 1840 a monthly benefit under this section shall be treated as a monthly insurance benefit payable under section 202.

**Annual Reimbursement of Federal Old-Age and Survivors Insurance Trust Fund**

(g) There are authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for the fiscal year ending June 30,

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1969, and for each fiscal year thereafter, such sums as the Secretary of Health, Education, and Welfare deems necessary on account of—

(1) payments made under this section during the second preceding fiscal year and all fiscal years prior thereto to individuals who, as of the beginning of the calendar year in which falls the month for which payment was made, had less than 3 quarters of coverage,

(2) the additional administrative expenses resulting from the payments described in paragraph (1), and

(3) any loss in interest to such Trust Fund resulting from such payments and expenses,

in order to place such Trust Fund in the same position at the end of such fiscal year as it would have been in if such payments had not been made.

#### Definitions

(h) For purposes of this section—

(1) The term “quarter of coverage” includes a quarter of coverage as defined in section 5(l) of the Railroad Retirement Act of 1937.

(2) The term “governmental pension system” means the insurance system established by this title or any other system or fund established by the United States, a State, any political subdivision of a State, or any wholly owned instrumentality of any one or more of the foregoing which provides for payment of (A) pensions, (B) retirement or retired pay, or (C) annuities or similar amounts payable on account of personal services performed by any individual (not including any payment under any workmen’s compensation law or any payment by the Veterans’ Administration as compensation for service-connected disability or death).

(3) The term “periodic benefit” includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(4) The determination of whether an individual is a husband or wife for any month shall be made under subsection (h) of section 216 without regard to subsections (b) and (f) of section 216.

#### Benefits in Case of Members of the Uniformed Services

**Sec. 229.** (a) For purposes of determining entitlement to and the amount of any monthly benefit for any month [after December 1967] *after December 1971*,<sup>1</sup> or entitlement to and the amount of any lump-sum death payment in case of a death after such month, payable under this title on the basis of the wages and self-employment income of any individual, and for purposes of section 216(i)(3), such individual shall be deemed to have been paid, in each calendar quarter occurring [after 1967] *after 1966*<sup>1</sup> in which he was paid wages for service as a member of a uniformed service (as defined in section 210(m)) which was included in the term “employment” as defined

<sup>1</sup> Applies to benefits for months after December 1971 and to lump-sum death payments for deaths occurring after December 1971, subject to exception in section 126(b) of the amendments.

in section 210(a) as a result of the provisions of section 210(1), wages [(in addition to the wages actually paid to him for such service) of—

[(1) \$100 if the wages actually paid to him in such quarter for such services were \$100 or less,

[(2) \$200 if the wages actually paid to him in such quarter for such services were more than \$100 but not more than \$200, or

[(3) \$300 in any other case.]  
of \$300.<sup>1</sup>

(b) There are authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund annually, as benefits under this title and part A of title XVIII are paid after December 1967, such sums as the Secretary determines to be necessary to meet (1) the additional costs, resulting from subsection (a), of such benefits (including lump-sum death payments), (2) the additional administrative expenses resulting therefrom, and (3) any loss in interest to such trust funds resulting from the payment of such amounts. Such additional costs shall be determined after any increases in such benefits arising from the application of section 217 have been made.

### **Adjustment of the Contribution and Benefit Base**

**Sec. 230.** (a) *Whenever the Secretary pursuant to section 215(i) increases benefits effective with the first month of the calendar year following a cost-of-living computation quarter, he shall also determine and publish in the Federal Register on or before November 1 of the calendar year in which such quarter occurs (along with the publication of such benefit increase as required by section 215(i)(2)(D)) the contribution and benefit base determined under subsection (b) which shall be effective (unless such increase in benefits is prevented from becoming effective by section 215(i)(2)(E)) with respect to remuneration paid after the calendar year in which such quarter occurs and taxable years beginning after such year.*

(b) *The amount of such contribution and benefit base shall be the amount of the contribution and benefit base in effect in the year in which the determination is made or, if larger, the product of—*

(1) *the contribution and benefit base which was in effect with respect to remuneration paid in (and taxable years beginning in) the calendar year in which the determination under subsection (a) with respect to such particular calendar year was made, and*

(2) *the ratio of (A) the average of the taxable wages of all employees as reported to the Secretary for the first calendar quarter of the calendar year in which the determination under subsection (a) with respect to such particular calendar year was made to (B) the average of the taxable wages of all employees as reported to the Secretary for the first calendar quarter of 1972 or, if later, the first calendar quarter of the most recent calendar year in which an increase in the contribution and benefit base was enacted or a determination resulting in such an increase was made under subsection (a),*

<sup>1</sup> See footnote on p. 173.

with such product, if not a multiple of \$300, being rounded to the next higher multiple of \$300 where such product is a multiple of \$150 but not of \$300 and to the nearest multiple of \$300 in any other case.

(c) For purposes of this section, and for purposes of determining wages and self-employment income under sections 209, 211, 213, and 215 of this Act and sections 1402, 3121, 3122, 3125, 6413, and 6654 of the Internal Revenue Code of 1954, the "contribution and benefit base" with respect to remuneration paid in (and taxable years beginning in) any calendar year after 1971 and prior to the calendar year with the first month of which the first increase in benefits pursuant to section 215(i) of this Act becomes effective shall be \$10,200 or (if applicable) such other amount as may be specified in a law enacted subsequent to the Social Security Amendments of 1971.

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**TITLE IV—GRANTS TO STATES FOR *FAMILY* [AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN] AND [FOR] CHILD-WELFARE SERVICES**

**PART A—[AID] SERVICES TO NEEDY FAMILIES WITH [DEPENDENT] CHILDREN**

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## Part A—[Aid] Services to Needy Families with [Dependent] Children

### Appropriation

**Section 401.** For the purpose of encouraging the care of [dependent] children in their own homes or in the homes of relatives by enabling each State to furnish [financial assistance and] rehabilitation and other services, as far as practicable under the conditions in such State, to needy [dependent] children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is hereby authorized to be appropriated for each fiscal year (*subject to section 1125*) a sum sufficient to carry out the purposes of this part. [The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health, Education, and Welfare, State plans for [aid and] services to needy families with children.]

### State Plans for [Aid and] Services to Needy Families with Children

**Section 402.** (a) A State plan for [aid and] services to needy families with children must

(1) *except to the extent permitted by the Secretary [with respect to services],<sup>1</sup>* provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State;

(3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;

[(4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to families with dependent children is denied or is not acted upon with reasonable promptness;]

[(5)] (4) provide (A) such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of [recipients and other] persons of low income, as community services aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services [to applicants and recipients] *under the plan* and in assisting any advisory committees established by the State agency; and

<sup>1</sup> Effective upon enactment. The phrase "with respect to services" is deleted effective July 1, 1972.

[(6)] (b) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

[(7) except as may be otherwise provided in clause (8), provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income;

[(8) provide that, in making the determination under clause (7), the State agency (subject to subsection (d))<sup>1</sup>—

[(A) shall with respect to any month disregard—

[(i) all of the earned income of each dependent child receiving aid to families with dependent children who is (as determined by the State in accordance with standards prescribed by the Secretary) a full-time student or part-time student who is not a full-time employee attending a school, college, or university, or a course of vocational or technical training designed to fit him for gainful employment, and

[(ii) in the case of earned income of a dependent child not included under clause (i), a relative receiving such aid, and any other individual (living in the same home as such relative and child) whose needs are taken into account in making such determination, the first \$30 of the total of such earned income for such month plus one-third of the remainder of such income for such month (except that the provisions of this clause (ii) shall not apply to earned income derived from participation on a project maintained under the programs established by section 432(b) (2) and (3); and

[(B) (i) may, subject to the limitations prescribed by the Secretary, permit all or any portion of the earned or other income to be set aside for future identifiable needs of a dependent child, and (ii) may, before disregarding the amounts referred to in subparagraph (A) and clause (i) of this subparagraph, disregard not more than \$5 per month of any income; except that, with respect to any month, the State agency shall not disregard any earned income (other than income referred to in subparagraph (B)) of—

[(C) any one of the persons specified in clause (ii) of subparagraph (A) if such person—

[(i) terminated his employment or reduced his earned income without good cause within such period (of not less than 30 days) preceding such month as may be prescribed by the Secretary; or

[(ii) refused without good cause, within such period preceding such month as may be prescribed by the Secretary, to accept employment in which he is able to engage which is

<sup>1</sup> Effective upon enactment.

offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined by the State or local agency administering the State plan, after notification by him, to be a bona fide offer of employment; or

[(D) any of such persons specified in clause (ii) of subparagraph (A) if with respect to such month the income of the persons so specified (within the meaning of clause (7)) was in excess of their need as determined by the State agency pursuant to clause (7) (without regard to clause (8)), unless, for any one of the four months preceding such month, the needs of such person were met by the furnishing of aid under the plan;]

[(9)] (6) provide safeguards which restrict the use or disclosure of information concerning [applicants and recipients] *persons seeking or receiving services under the plan* to purposes directly connected with the administration of [aid to families with dependent children;] *the plan;*

[(10) provide, effective July 1, 1951, that all individuals wishing to make application for aid to families with dependent children shall have opportunity to do so, and that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals;

[(11) effective July 1, 1952, provide for prompt notice to appropriate law-enforcement officials of the furnishing of aid to families with dependent children in respect of a child who has been deserted or abandoned by a parent;

[(12) provide, effective October 1, 1950, that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 2 of this Act;]

[(13)] (7) provide a description of the services which the State agency makes available to maintain and strengthen family life for children, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services;

[(14)] (8) provide for the development and application of [a program for] such [family] services *for any individual receiving assistance to needy families with children,*<sup>1</sup> as defined in section [406(d)] 405(d) and child welfare services, as defined in section 425, for [each child and relative who receives aid to] *members of a family receiving assistance to needy*<sup>1</sup> families with [dependent] children and [each appropriate individual (living in the same home as a relative and child receiving such aid whose needs are taken into account in making the determination under clause (7)).] *individuals who would have been eligible to receive aid to families with dependent children under the State plan (approved under this part) as in effect prior to the enactment of Title XXI,*<sup>1</sup> as may be necessary in the light of the particular home conditions and other needs of such *members* [child, relative,] and individuals, in order to assist such [child, relative,] *members* and individuals to attain or retain capability for self-support and care and in order to maintain and strengthen family life and to foster child development;

<sup>1</sup> Effective on date of enactment or, in the case of any State, on such later date (not after July 1, 1972) as may be specified in the notification made in the State plan approved under section 402 of the Social Security Act to carry out such amendments.



[(15)] (9) provide—

(A) for the development of a program, for [each] appropriate *members of such families* [relative and dependent child receiving aid under the plan,] and *such other* [each appropriate] individuals, [(living in the same home as a relative and child receiving such aid) whose needs are taken into account in making the determination under clause (7), with the objective of—

[(i) assuring, to the maximum extent possible, that such relative, child, and individual will enter the labor force and accept employment so that they will become self-sufficient, and] for

[(ii)] preventing or reducing the incidence of births out of wedlock and otherwise strengthening family life, and

[(B)] for [the implementation of] *implementing* such program[s] by[—]

[(i)] assuring that [such relative, child, or individual who is referred to the Secretary of Labor pursuant to clause (19) is furnished child-care services and that] in all appropriate cases family planning services are offered to them, [and] but

[(ii) in appropriate cases, providing aid to families with dependent children in the form of payments of the types described in section 406(b) (2), and]

[(C) that the] acceptance [by such child, relative, or individual] of family planning services provided under the plan shall be voluntary on the part of such [child, relative, or individual] *members and individuals* and shall not be a prerequisite to eligibility for or the receipt of any other service [or aid] under the plan; and

[(D) for such review of each such program as may be necessary (as frequently as may be necessary, but at least once a year) to insure that it is being effectively implemented,

[(E) for furnishing the Secretary with such reports as he may specify showing the results of such programs, and]

[(F)] (B) to the extent that [such programs] *services provided* under this clause or clause [(14)] (8) are [developed and implemented by services] furnished by the staff of the State agency or the local agency administering the State plan in each of the political subdivisions of the State, for the establish[ing]ment of a single organizational unit in such State or local agency, as the case may be, responsible for the furnishing of such services;

[(16)] (10) provide that where the State agency has reason to believe that the home in which a relative and child receiving [aid] *assistance to needy families with children* reside is unsuitable for the child because of the neglect, abuse, or exploitation of such child it shall bring such condition to the attention of the appropriate court or law enforcement agencies in the State, providing such data with respect to the situation it may have;

[(17)] (11) provide—

(A) for the development and implementation of a program under which the State agency will undertake—

(i) in the case of a child born out of wedlock who is receiving [aid to families with dependent children] *assistance to needy families with children*, to establish the paternity of such child and secure support for him, [and]

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(ii) in the case of any child receiving such [aid] assistance who has been deserted or abandoned by his parent, to secure support for such child from such parent (or from any other person legally liable for such support), utilizing any reciprocal arrangements adopted with other States to obtain or enforce court orders for support, and

(iii) in the case of any parent (of a child, referred to in clause (ii)) receiving such assistance who has been deserted or abandoned by his or her spouse, to secure support for such parent from such spouse (or from any other person legally liable for such support), utilizing any reciprocal arrangements adopted with other States to obtain or enforce court orders for support, and<sup>1</sup>

(B) for the establishment of a single organizational unit in the State agency or local agency administering the State plan in each political subdivision which will be responsible for the administration of the program referred to in clause (A) ;

[(18)](12) provide for entering into cooperative arrangements with appropriate courts and law enforcement officials (A) to assist the State agency in administering the program referred to in clause [(17)](11) (A), including the entering into of financial arrangements with such courts and officials in order to assure optimum results under such program, and (B) with respect to any other matters of common concern to such courts or officials and the State agency or local agency administering the State plan ;

[(19) provide—

[(A) for the prompt referral to the Secretary of Labor or his representative for participation under a work incentive program established by part (C) of—

[(i) each appropriate child and relative who has attained age sixteen and is receiving aid to families with dependent children,

[(ii) each appropriate individual (living in the same home as a relative and child receiving such aid) who has attained such age and whose needs are taken into account in making the determination under section 402 (a) (7), and

[(iii) any other person claiming aid under the plan (not included in clauses (i) and (ii), who, after, being informed of the work incentive programs established by part C, requests such referral unless the State agency determines that participation in any of such programs would be inimical to the welfare of such person or the family; except that the State agency shall not so refer a child, relative, or individual under clauses (i) and (ii) if such child, relative, or individual is—

[(iv) a person with illness, incapacity, or advanced age,

[(v) so remote from any of the projects under the work incentive programs established by part C that he cannot effectively participate under any of such programs,

[(vi) a child attending school full time, or

<sup>1</sup> Effective on date of enactment or, in the case of any State, on such later date (not after July 1, 1972) as may be specified in the modification made in the State's plan approved under section 402 of the Social Security Act to carry out such amendments.

[(vii) a person whose presence in the home on a substantially continuous basis is required because of the illness or incapacity of another member of the household;

[(B) that aid under the plan will not be denied by reason of such referral or by reason of an individual's participation on a project under the program established by section 432(b) (2) or (3);

[(C) for arrangements to assure that there will be made a non-Federal contribution to the work incentive programs established by part C by appropriate agencies of the State or private organizations of [20] 10<sup>1</sup> per centum of the cost of such programs, as specified in section 435(b);

[(D) that (i) training incentives authorized under section 434, and income derived from a special work project under the program established by section 432 (b) (3) shall be disregarded in determining the needs of an individual under section 402(a) (7), and (ii) in determining such individual's needs the additional expenses attributable to his participation in a program established by section 432 (b) (2) or (3) shall be taken into account;

[(E) that, with respect to any individual referred pursuant to subparagraph (A) who is participating in a special work project under the program established by section 432 (b) (3), (i) the State agency, after proper notification by the Secretary of Labor, will pay to such Secretary (at such times and in such manner as the Secretary of Health, Education, and Welfare prescribes) the money payments such State would otherwise make to or on behalf of such individual (including such money payments with respect to such individual's family), or 80 per centum of such individual's earnings under such program, whichever is lesser and (ii) the State agency will supplement any earnings received by such individual by payments to such individual (which payments shall be considered aid under the plan) to the extent that such payments when added to the individual's earnings from his participation in such special work project will be equal to the amount of the aid that would have been payable by the State agency with respect to such individual's family had he not participated in such special work project, plus 20 per centum of such individual's earnings from such special work project; and

[(F) that if and for so long as any child, relative, or individual (referred to the Secretary of Labor pursuant to subparagraph (A) (i) and (ii) and section 407 (b) (2), has been found by the Secretary of Labor under section 433 (g) to have refused without good cause to participate under a work incentive program established by part C with respect to which the Secretary of Labor has determined his participation is consistent with the purposes of such part C, or to have refused without good cause to accept employment in which he is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined, after notification by him, to be a bona fide offer of employment—

<sup>1</sup> Effective with respect to costs incurred on and after July 1, 1971.

[(i) if the relative makes such refusal, such relative's needs shall not be taken into account in making the determination under clause (7), and aid for any dependent child in the family in the form of payments of the type described in section 406 (b) (2) (which in such a case shall be without regard to clauses (A) through (E) thereof) or section 408 will be made;

[(ii) aid with respect to a dependent child will be denied if a child who is the only child receiving aid in the family makes such refusal;

[(iii) if there is more than one child receiving aid in the family, aid for any such child will be denied (and his needs will not be taken into account in making the determination under clause (7)) if that child makes such refusal; and

[(iv) if such individual makes such refusal, such individual's needs shall not be taken into account in making the determination under clause (7);

except that the State agency shall for a period of sixty days, make payments of the type described in section 406 (b) (2) (without regard to clauses (A) through (E) thereof) on behalf of the relative specified in clause (i), or continue aid in the case of a child specified in clause (ii) or (iii), or take the individual's needs into account in the case of an individual specified in clause (iv), but only if during such period such child, relative, or individual accepts counseling or other services (which the State agency shall make available to such child, relative, or individual) aimed at persuading such relative, child, or individual, as the case may be, to participate in such program in accordance with the determination of the Secretary of Labor;]

[(20)] (13) effective July 1, 1969, provide for [aid to families with dependent children in the form of] *payments for foster care* in accordance with section [408] 406;

[(21)] (14) provide that the State agency will report to the Secretary, at such times (not less often than once each calendar quarter) and in such manner as the Secretary may prescribe—

(A) the name, and social security account number, if known, of each *person who is the*<sup>1</sup> parent of a dependent child or children with respect to whom [aid is being provided] *assistance to needy families with children or foster care* under the State plan *is being provided or is the spouse of the parent of such child or children*<sup>1</sup>—

(i) against whom an order for the support and maintenance of such child or children *or such parent*<sup>1</sup> has been issued by a court of competent jurisdiction but who is not making payments in compliance or partial compliance with such order, or against whom a petition for such an order has been filed in a court having jurisdiction to receive such petition, and

(ii) whom it has been unable to locate after requesting and utilizing information included in the files of the Depart-

<sup>1</sup> Effective on date of enactment or, in the case of any State, on such later date (not after July 1, 1972) as may be specified in the modification made in the State's plan approved under section 402 of the Social Security Act to carry out such amendments.

ment of Health, Education, and Welfare maintained pursuant to section 205,

(B) the last known address of such [parent] person<sup>1</sup> and any information it has with respect to the date on which such [parent] person could last be located at such address, and

(C) such other information as the Secretary may specify to assist in carrying out the provisions of section [410] 407;

[(22)] (15) provide that the State agency will, in accordance with standards prescribed by the Secretary, cooperate with the State agency administering or supervising the administration of the plan of another State under this part—

(A) in locating a [parent] person<sup>1</sup> residing in such State (whether or not permanently) against whom a petition has been filed in a court of competent jurisdiction of such other State for the support and maintenance of *the spouse or*<sup>1</sup> a child or children of such [parent] person<sup>1</sup> with respect to whom [aid is being provided under the plan of such other State,] *assistance to needy families with children or foster care payments are being provided in such other State,* and

(B) in securing compliance or good faith partial compliance by a [parent] person<sup>1</sup> residing in such State (whether or not permanently) with an order issued by a court of competent jurisdiction against such [parent] person<sup>1</sup> for the support and maintenance of *the spouse or*<sup>1</sup> a child or children of such [parent] person<sup>1</sup> with respect to whom [aid is being provided under the plan of such other State;] *assistance to needy families with children or foster care payments are being provided in such other State;* and

[(23)] (16) provide that [by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted.], *to the extent services under the plan are furnished by the staff of the State or local agency administering the plan in any political subdivision of the State, such staff will be located in organizational units (up to such organizational levels as the Secretary may prescribe) which are separate and distinct from the units within such agencies responsible for determining eligibility for any form of cash assistance paid on a regularly recurring basis or for performing any functions directly related thereto, subject to any exceptions which, in accordance with standards prescribed in regulations, the Secretary may permit when he deems it necessary in order to ensure the effective administration of the plan.*

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a), except that he shall not approve any plan which imposes, as a condition of eligibility for [aid to families with dependent children] *services or foster care payments under it,* [a] any residence requirement which denies [aid] *services or foster care payments* with respect to any [child] individual residing in the State [(1) who has resided in the State for one year immediately preceding the application for such aid, or (2) who was born within one

<sup>1</sup> Effective on date of enactment or, in the case of any State, on such later date (not after July 1, 1972) as may be specified in the modification made in the State's plan approved under section 402 of the Social Security Act to carry out such amendments.

year immediately preceding the application, if the parent or other relative with whom the child is living has resided in the State for one year immediately preceding the birth].

[(c) The Secretary shall, on the basis of his review of the reports received from the States under clause (15) of subsection (a), compile such data as he believes necessary and from time to time publish his findings as to the effectiveness of the programs developed and administered by the States under such clause. The Secretary shall annually report to the Congress (with the first such report being made on or before July 1, 1970) on the programs developed and administered by each State under such clause (15).]

[(d) Any State may modify its State plan approved under this section—

[(1) to provide—

[(A) that, for purposes of determining the amount of payment, expenses attributable to the earning of income shall not be taken into consideration as otherwise required by subsection (a) (7), and

[(B) that the State agency shall with respect to any month disregard (in lieu of the amount such agency is otherwise required to disregard under clause (A) (ii) of subsection (a) (8), in the case) of earned income of a dependent child not included under clause (A) (i) of such subsection, a relative receiving such aid, and any other individual (living in the same home as such relative and child) whose needs are taken into account in making the determination under subsection (a) (7), the first \$60 of the total of such earned income for such month plus one-third of the remainder of such income for such month (subject to the parenthetical exception in such clause (A) (ii)), plus any expenses incurred by members of the family for child care with respect to such dependent child and any other dependent children in the family; or

[(2) to provide that the total amount which may be disregarded under clauses (A) (ii) and (B) of subsection (a) (8), and under the provision of subsection (a) (7), insofar as it relates to expenses of child care, shall not exceed the lesser of—

[(A) \$2,000 plus \$200 for each member of the family in excess of four, or

[(B) \$3,000,

or a proportionately smaller amount for periods shorter than a year; or

[(3) to include in such plan both the provisions specified in paragraph (1) and the provision specified in paragraph (2).<sup>1</sup>]

### Payment to States

Sec. 403. (a) From the sums appropriated therefor, the Secretary of the Treasury shall (subject to subsection (d)) pay to each State which has an approved plan for [laid and] services to needy families with children, for each quarter, beginning with the quarter commencing October 1, 1958—

<sup>1</sup> Effective upon enactment and until July 1, 1972.

(1) [in the case of any State other than Puerto Rico, the Virgin Islands, and Guam,] an amount equal to the sum of the following proportions of the total amounts expended during such quarter as [aid to families with dependent children under the State plan (including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)] *payments for foster care in accordance with section 406—*

(A) five-sixths of such expenditures, not counting so much of any expenditure with respect to any month as exceeds the product of \$18 multiplied by the total number of [recipients of aid to families with dependent] children [for] *receiving such foster care for such month* [(which total number, for purposes of this subsection, means (i) the number of individuals with respect to whom such aid in the form of money payments is paid for such month, plus (ii) the number of other individuals with respect to whom expenditures were made in such month as aid to families with dependent children in the form of medical or any other type of remedial care, plus (iii) the number of individuals, not counted under clause (i) or (ii), with respect to whom payments described in section 406(b)(2) are made in such month and included as expenditures for purposes of this paragraph or paragraph (2))]; plus

(B) the Federal percentage of the amount by which such expenditures exceed the maximum which may be counted under [clause] *subparagraph* (A), not counting so much of any expenditure with respect to any month as exceeds [(i) the product of \$32 multiplied by the total number of recipients of aid to families with dependent children (other than such aid in the form of foster care) for such month, plus (ii)] the product of \$100 multiplied by the total number of [recipients of aid to families with dependent] children [in the form of] *receiving such foster care for such month; [and]*

[(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as aid to families with dependent children under the State plan (including expenditures for premiums under part B of Title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof) not counting so much of any expenditure with respect to any month as exceeds \$18 multiplied by the total number of recipients of such aid for such month;] and

[(3)] (2) [in the case of any State,] an amount equal to the sum of the following proportions of the total amounts expended during such quarter (*subject to section 1125*) as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures as are for—

(i) any of the services described in [clauses [(14)] (8) and [(15)] (9) of section 402(a)] *section 405(d)* which are provided to any child [or relative who is receiving aid under the plan, or to any other individual (living in the same home as such relative and child) whose needs are taken into account in making the determination under clause (7) of such section,] *receiving foster care under the State plan or any member of a family receiving assistance to needy families with children.*

(ii) any of the services described in [clauses [(14)] (8) and [(15)] (9) of] *section [402(a)] 405(d)* which are provided to any [child or relative who is applying for aid to families with dependent children or] *member of a family* who, within such period or periods as the Secretary may prescribe, has been or is likely to become [an applicant for or recipient of such aid] *eligible to receive such assistance, [or]*

(iii) the training of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision [; plus], *or*

(iv) *the cost of carrying out the requirements of clauses (11), (12), (14), and (15) of section 402(a); plus*

(B) one-half of the remainder of such expenditures.

The services referred to in subparagraph (A) shall include only—

(C) services provided by the staff of the State agency, or of the local agency administering the State plan in the political subdivision: *Provided*, That no funds authorized under this part shall be available for services defined as vocational rehabilitation services under the Vocational Rehabilitation Act (i) which are available to individuals in need of them under programs for their rehabilitation carried on under a State plan approved under such Act, or (ii) which the State agency or agencies administering or supervising the administration of the State plan approved under such Act are able and willing to provide if reimbursed for the cost thereof pursuant to agreement under subparagraph (D), if provided by such staff, and

(D) subject to limitations prescribed by the Secretary, services which in the judgment of the State agency cannot be as economically or as effectively provided by the staff of such State or local agency and are not otherwise reasonably available to individuals in need of them, and which are provided, pursuant to agreement with the State agency, by the State health authority or the State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act or by any other State agency which the Secretary may determine to be appropriate (whether provided by its staff or by contact with public (local) or nonprofit private agencies);

except that services described in clause (ii) of subparagraph (C) hereof may be provided only pursuant to agreement with such

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State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services so approved; and except that, to the extent specified by the Secretary, [child-welfare services, family planning services, and family] services *under the plan* may be provided from sources other than those referred to in subparagraphs (C) and (D). The portion of the amount expended for administration of the State plan to which subparagraph (A) applies and the portion thereof to which subparagraph (B) applies shall be determined in accordance with such methods and procedures as may be permitted by the Secretary; and

[(4) Repealed]

[(5) (3) [in the case of any State] an amount equal to the sum of—

(A) 50 per centum of the total amount expended under the State plan during such quarter as emergency assistance to needy families with children in the form of payments or care specified in paragraph (1) of section [406(e)] 405(e), and

(B) 75 per centum of the total amount expended under the State plan during such quarter as emergency assistance to needy families with children in the form of services specified in paragraph (1) of section [406(e)] 405(e).

[The number of individuals with respect to whom payments described in section 406(b) (2) are made for any month, who may be included as recipients of aid to families with dependent children for purposes of paragraph (1) or (2), may not exceed 10 per centum of the number of other recipients of aid to families with dependent children for such month. In computing such 10 percent, there shall not be taken into account individuals with respect to whom such payments are made for any month in accordance with section 402(a) (19) (F).]

(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Health, Education, and Welfare shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarters, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, [(B) records showing the number of dependent children in the State] and [(C)] (B) such other investigation as the Secretary may find necessary.

(2) The Secretary of Health, Education, and Welfare shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health, Education, and Welfare, [(A)] reduced or increased, as the case may be, by any sum by which the Secretary of Health, Education, and Welfare finds that his estimate for any prior quarter was greater or less than the amount

which should have been paid to the State for such quarter **[(** and **(B)]** reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health, Education, and Welfare, of the net amount recovered during any prior quarter by the State or any political subdivision thereof with respect to aid to families with dependent children furnished under the State plan**]**; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health, Education, and Welfare for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Health, Education, and Welfare, the amount so certified.

### Operation of State Plans

**Sec. 404. [(a)]** In the case of any State plan for **[aid and]** services to needy families with children which has been approved by the Secretary of Health, Education, and Welfare, if the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan **[has been so changed as to impose any residence requirement prohibited by]** *no longer complies with the provisions of section 402 [(b)]*, or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases**]**; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 402 (a) to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until the Secretary is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

**[(b)]** No payment to which a State is otherwise entitled under this title for any period before September 1, 1962, shall be withheld by reason of any action taken pursuant to a State statute which requires that aid be denied under the State plan approved under this part with respect to a child because of the conditions in the home in which the child resides; nor shall any such payment be withheld for any period beginning on or after such date by reason of any action taken pursuant to such a statute if provision is otherwise made pursuant to a State statute for adequate care and assistance with respect to such child.**]**

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### [Use of Payments for Benefit of Child]

[Sec. 405. Whenever the State agency has reason to believe that any payments of aid to families with dependent children made with respect to a child are not being or may not be used in the best interests of the child, the State agency may provide for such counseling and guidance services with respect to the use of such payments and the management of other funds by the relative receiving such payments as it deems advisable in order to assure use of such payments in the best interests of such child, and may provide for advising such relative that continued failure to so use such payments will result in substitution therefor of protective payments as provided under section 406 (b) (2), or in seeking appointment of a guardian or legal representative as provided in section 1111, or in the imposition of criminal or civil penalties authorized under State law if it is determined by a court of competent jurisdiction that such relative is not using or has not used for the benefit of the child any such payments made for that purpose; and the provision of such services or advice by the State agency (or the taking of the action specified in such advice) shall not serve as a basis for withholding funds from such State under section 404 and shall not prevent such payments with respect to such child from being considered aid to families with dependent children.]

### Definitions

Sec. [406] 405. When used in this part—

(a) The term “[dependent] child” means a [needy] child *as defined in section 2155 (b)* [(1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment].

(b) The term “[aid to] needy families with [dependent] children” means [money payments with respect to, or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of, a dependent child or dependent children, [and includes] *and, in the case of nonrecurring special needs (as determined in accordance with regulations prescribed by the Secretary) which involve a cost of*

\$50 or more, includes a payment with respect to a dependent child (and the relative with whom he is living) which is made directly to the person furnishing the food, living accommodations, or other goods, services, or items necessary to meet such needs. Such term also includes<sup>1</sup> (1) money payments or medical care or any type of remedial care recognized under State law to meet the needs of the relative with whom any dependent child is living (and the spouse of such relative if living with him and if such relative is the child's parent and the child is a dependent child by reason of the physical or mental incapacity of a parent or is a dependent child under section 407), and (2) payments with respect to any dependent child (including payments to meet the needs of the relative, and the relative's spouse, with whom such child is living, and the needs of any other individual living in the same home if such needs are taken into account in making the determination under section 402(a) (1) which do not meet the preceding requirements of this subsection but which would meet such requirements except that such payments are made to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such child or relative, or are made on behalf of such child or relative directly to a person furnishing food, living accommodations, or other goods, services, or items to or for such child, relative, or other individual, but only with respect to a State whose State plan approval under section 402 includes provision for—

[(A) determination by the State agency that the relative of the child with respect to whom such payments are made has such inability to manage funds that making payments to him would be contrary to the welfare of the child and, therefore, it is necessary to provide such aid with respect to such child and relative through payments described in this clause (2);

[(B) undertaking and continuing special efforts to develop greater ability on the part of the relative to manage funds in such manner as to protect the welfare of the family;

[(C) periodic review by such State agency of the determination under clause (A) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1111, if and when it appears that the need for such payments is continuing, or is likely to continue, beyond a period specified by the Secretary;

[(D) aid in the form of foster home care in behalf of children described in section 408(a); and

[(E) opportunity for a fair hearing before the State agency on the determination referred to in clause (A) for any individual with respect to whom it is made;]

*families who are eligible for benefits under part A or part B of title XXI, other than families in which both parents of the child or children are present, neither parent is incapacitated, and the male parent is not unemployed.*

<sup>1</sup> Effective upon enactment and until July 1, 1972.

(c) The term ["relative with whom any dependent child is living" means the individual who is one of the relatives specified in subsection (a) and with whom such child is living (within the meaning of such subsection) in a place of residence maintained by such individual (himself or together with any one or more of the other relatives so specified) as his (or their) own home.]

*"Assistance to needy families with children" means benefits under part A or part B of title XXI, paid to needy families with children as defined in subsection (b).*

[(d) The term "family services" means services to a family or any member thereof for the purpose of preserving, rehabilitating, reuniting, or strengthening the family, and such other services as will assist members of a family to attain or retain capability for the maximum self-support and personal independence.]

*(d) The term "services for any individual receiving assistance to needy families with children" means any of the following services provided for any such individual:*

- (1) Family planning services, including medical services;*
- (2) Child care services required because of the employment, training, or illness or incapacity of the child's parent or other relative caring for him;*
- (3) Services to unmarried girls who are pregnant or already have children, for the purpose of arranging for prenatal and postnatal care of the mother and child, developing appropriate living arrangements for the child, and assisting the mother to complete school through the secondary level or secure training so that she may become self-sufficient;*
- (4) Protective services for children who are (or are in danger of) being abused, neglected, or exploited;*
- (5) Homemaker services when the usual homemaker becomes ill or incapacitated or is otherwise unable to care for the children in the family, and services to educate appropriate family members about household and related financial management and matters pertaining to consumer protection;*
- (6) Nutrition services;*
- (7) Services to assist needy families with children to deal with problems of locating suitable housing arrangements and other problems of inadequate housing, and to educate them in practices of home management and maintenance;*
- (8) Educational services, including assisting appropriate family members in securing available adult basic education;*
- (9) Emergency services made available in connection with a crisis or urgent need of the family;*
- (10) Services to assist appropriate family members to engage in training or secure or retain employment;*
- (11) Services to assist individuals to meet problems resulting from drug abuse or alcohol abuse; and*
- (12) Information and referral services for individuals in need of services from other agencies (such as the health, education, or vocational rehabilitation agency, or private social agencies) and follow-up activities to assure that individuals referred to and eligible for available services from such other agencies received such services.*

(e) (1) The term "emergency assistance to needy families with children" means any of the following, furnished for a period not in excess of 30 days in any 12-month period, in the case of a needy child under the age 21 who is (or, within such period as may be specified by the Secretary, has been) [living with any of the relatives specified in subsection (a) (1) in a place of residence maintained by one or more of such relatives as his or their own home] *a member of a family (as defined in section 2155(a))*, but only where such child is without available resources, the payments, care, or services involved are necessary to avoid destitution of such child or to provide living arrangements in a home for such child, and such destitution or need for living arrangements did not arise because such child or [relative] *another member of such family* refused without good cause to accept employment or training for employment—

(A) money payments, payments in kind, or such other payments as the State agency may specify with respect to, or medical care or any other type of remedial care recognized under State law on behalf of, such child or any other member of [the household in which he is living] *such family*, and

(B) such services as may be specified by the Secretary; but only with respect to a State whose State plan approved under section 402 includes provision for such assistance.

(2) Emergency assistance as authorized under paragraph (1) may be provided under the conditions specified in such paragraph to migrant workers with families in the State or in such part or parts thereof as the State shall designate.

### [Dependent Children of Unemployed Fathers]

[Sec. 407. (a) The term 'dependent child' shall, notwithstanding section 406(a), include a needy child who meets the requirements of section 406(a)(2), who has been deprived of parental support or care by reason of the unemployment (as determined in accordance with standards prescribed by the Secretary) of his father, and who is living with any of the relatives specified in section 406(a)(1) in a place of residence maintained by one or more of such relatives as his (or their) own home.

[(b) The provisions of subsection (a) shall be applicable to a State if the State's plan approved under section 402—

[(1) requires the payment of aid to families with dependent children with respect to a dependent child as defined in subsection (a) when—

[(A) such child's father has not been employed (as determined in accordance with standards prescribed by the Secretary) for at least 30 days prior to the receipt of such aid,

[(B) such father has not without good cause, within such period (of not less than 30 days) as may be prescribed by the Secretary, refused a bona fide offer of employment or training for employment, and

[(C) (i) such father has 6 or more quarters of work (as defined in subsection (c)(1)) in any 13-calendar-quarter period ending within one year prior to the application for such aid or (ii) he received unemployment compensation under an unemployment compensation law of a State or of

the United States, or he was qualified (within the meaning of subsection (d) (3)) for unemployment compensation under the unemployment compensation law of the State, within one year prior to the application for such aid; and

[(2) provides—

[(A) for such assurances as will satisfy the Secretary that fathers of dependent children as defined in subsection (a) will be referred to the Secretary of Labor as provided in section 402(a) (19) within thirty days after receipt of aid with respect to such children;

[(B) for entering into cooperative arrangements with the State agency responsible for administering or supervising the administration of vocational education in the State, designed to assure maximum utilization of available public vocational education services and facilities in the State in order to encourage the retraining of individuals capable of being retrained; and

[(C) for the denial of aid to families with dependent children to any child or relative specified in subsection (a)—

[(i) if, and for so long as, such child's father is not currently registered with the public employment offices in the State, and

[(ii) with respect to any week for which such child's father receives unemployment compensation under an unemployment compensation law of a State or of the United States.

[(c) Notwithstanding any other provisions of this section, expenditures pursuant to this section shall be excluded from aid to families with dependent children (A) where such expenditures are made under the plan with respect to any dependent child as defined in subsection (a), (i) for any part of the 30-day period referred to in subparagraph (A) of subsection (b) (1), or (ii) for any period prior to the time when the father satisfies subparagraph (B) of such subsection, and (B) if, and for as long as, no action is taken (after the 30-day period referred to in subparagraph (A) of subsection (b) (2)), under the program therein specified, to refer such father to the Secretary of Labor pursuant to section 402(a) (19).

[(d) For purposes of this section—

[(1) the term "quarter of work" with respect to any individual means a calendar quarter in which such individual received earned income of not less than \$50 (or which is a "quarter of coverage" as defined in section 213(a) (2)), or in which such individual participated in a community work and training program under section 409 or any other work and training program subject to the limitations in section 409, or the work incentive program established under part C;

[(2) the term "calendar quarter" means a period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31; and

[(3) an individual shall be deemed qualified for unemployment compensation under the State's unemployment compensation law if—

[(A) he would have been eligible to receive such unemployment compensation upon filing application, or

[(B) he performed work not covered under such law and such work, if it had been covered, would (together with any covered work he performed) have made him eligible to receive such unemployment compensation upon filing application.]

### [Federal Payments for] Foster [Home] Care [of Dependent Children]

Sec. [408] 406. [Effective for the period beginning May 1, 1961—]  
For purposes of this part—

(a) The term “foster care” shall include only foster care which is provided in behalf of a child [“dependent child” shall, notwithstanding section 406 (a), also include a child] (1) who would [meet the requirements of such section 406 (a) or of section 407], except for his removal [after April 30, 1961,] from the home of a [relative] family [(specified in such section 406 (a))] as a result of a judicial determination to the effect that continuation therein would be contrary to [the] his welfare, [of such child] be a member of such family receiving assistance to needy families with children (or supplementary payments under section 2166), (2) whose placement and care are the responsibility of (A) the State or local agency administering the State plan approved under section 402, or (B) any other public agency with whom the State agency administering or supervising the administration of such State plan has made an agreement which is still in effect and which includes provision for assuring development of a plan, satisfactory to such State agency, for such child as provided in paragraph [(f)] (e) (1) and such other provisions as may be necessary to assure accomplishment of the objectives of the State plan approved under section 402, (3) who has been placed in a foster family home or child-care institution as a result of such determination, and (4) who (A) received [aid under such State plan] assistance to needy families with children (or aid to families with dependent children under the State plan approved under section 402 as in effect prior to the effective date of title XXI) in or for the month in which court proceedings leading to such determination were initiated, or (B) [(i)] would have received such [aid] assistance to needy families with children (or such aid) in or for such month if application had been made therefor, or [(ii)] (C) in the case of a child who had been [living with] a relative specified in section 406 (a) [a member of a family (as defined in section 2155 (a))] within six months prior to the month in which such proceedings were initiated, would have received such assistance (or such aid) in or for such month if in such month he had been [living with] a member of (and removed from the home of) such a [relative] family and application had been made therefor;

(b) the term “[aid to families with dependent children” shall, notwithstanding section 406 (b), include also] foster care” [in behalf of a child described in paragraph (a) of this section] shall, however, include the care described in paragraph (a) only if it is provided—

(1) in the foster family home of any individual, whether the payment therefor is made to such individual or to a public or nonprofit private child-placement or child-care agency, or



(2) in a child-care institution, whether the payment therefor is made to such institution or to a public or nonprofit private child-placement or child-care agency, but subject to limitations prescribed by the Secretary with a view to including as ["aid to families with dependent children"] "*foster care*" in the case of [such] foster care in such institutions only those items which are included in such term in the case of foster care in the foster family home of an individual; and

[(c)] the number of individuals counted under clause (A) of section 403(a) (1) for any month shall include individuals (not otherwise included under such clause) with respect to whom expenditures were made in such month as aid to families with dependent children in the form of foster care; and]

[(d)] (c) services described in paragraph [(f)] (e) (2) of this section shall be considered as part of the administration of the State plan for purposes of section 403(a) [(3)] (2); but only with respect to a State whose State plan approved under section 402—

[(e)] (d) includes [aid] *foster care* for any child described in paragraph (a) of this section, and

[(f)] (e) includes provision for (1) development of a plan for each such child (including periodic review of the necessity for the child's being in a foster family home or child-care institution) to assure that he receives proper care and that services are provided which are designed to improve the conditions in the home from which he was removed or to otherwise make possible his being placed in the home of a [relative specified in section 406(a)] *family* (as defined in section 2155(a)), and (2) use by the State or local agency administering the State plan, to the maximum extent practicable, in placing such a child in a foster family home or child-care institution, of the services of employees, of the State public-welfare agency referred to in section [522] 422(a) (relating to allotments to States for child welfare services under part [3 of title V]) *B of this title*) or of any local agency participating in the administration of the plan referred to in such section, who perform functions in the administration of such plan.

For the purposes of this section, the term "foster family home" means a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing homes of this type, as meeting the standards established for such licensing; and the term "child-care institution" means a nonprofit private child-care institution which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing.

### [Community Work and Training Programs]

[Sec. 409. (a) For the purpose of assisting the States in encouraging, through community work and training programs of a constructive nature, the conservation of work skills and the development of new skills for individuals who have attained the age of 18 and are receiving aid to families with dependent children, under conditions which are

designed to assure protection of the health and welfare of such individuals and the dependent children involved, expenditures (other than for medical or any other type of remedial care) for any month with respect to a dependent child (including payments to meet the needs of any relative or relatives, specified in section 406(a), with whom he is living) under a State plan approved under section 402 shall not be excluded from aid to families with dependent children because such expenditures are made in the form of payments for work performed in such month by any one or more of the relatives with whom such child is living if such work is performed for the State agency or any other public agency under a program (which need not be in effect in all political subdivisions of the State) administered by or under the supervision of such State agency, if there is State financial participation in such expenditures, and if such State plan includes—

[(1) provisions which, in the judgment of the Secretary, provide reasonable assurance that—

[(A) appropriate standards for health, safety, and other conditions applicable to the performance of such work by such relatives are established and maintained;

[(B) payments for such work are at rates not less than the minimum rate (if any) provided by or under State law for the same type of work and not less than the rates prevailing on similar work in the community;

[(C) such work is performed on projects which serve a useful public purpose, do not result either in displacement of regular workers or in the performance by such relatives of work that would otherwise be performed by employees of public or private agencies, institutions, or organizations, and (except in cases of projects which involve emergencies or which are generally of a nonrecurring nature) are of a type which has not normally been undertaken in the past by the State or community, as the case may be;

[(D) in determining the needs of any such relative, any additional expenses reasonably attributable to such work will be considered;

[(E) any such relative shall have reasonable opportunities to seek regular employment and to secure any appropriate training or retraining which may be available;

[(F) any such relative will, with respect to the work so performed, be covered under the State workmen's compensation law or be provided comparable protection; and

[(G) aid under the plan will not be denied with respect to any such relative (or the dependent child) for refusal by such relative to perform any such work if he has good cause for such refusal;

[(2) provision for entering into cooperative arrangements with the system of public employment offices in the State looking toward employment or occupational training of any such relatives performing work under such program, including appropriate provision for registration and periodic reregistration of such relatives and for maximum utilization of the job placement services and other services and facilities of such offices;

[(3) provision for entering into cooperative arrangements with the State agency or agencies responsible for administering or su-

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pervising the administration of vocational education and adult education in the State, looking toward maximum utilization of available public vocational or adult education services and facilities in the State in order to encourage the training or retraining of any such relatives performing work under such program and otherwise assist them in preparing for regular employment;

[(4) provision for assuring appropriate arrangements for the care and protection of the child during the absence from the home of any such relative performing work under such program in order to assure that such absence and work will not be inimical to the welfare of the child;

[(5) provision that there will be no adjustment or recovery by the State or any political subdivision thereof on account of any payments which are correctly made for such work; and

[(6) such other provisions as the Secretary finds necessary to assure that the operation of such program will not interfere with achievement of the objectives set forth in section 401.

[(b) In the case of any State which makes expenditures in the form described in subsection (a) under its State plan approved under section 402, the proper and efficient administration of the State plan, for purposes of section 403(a) (3) and (4) may not include the cost of making or acquiring materials or equipment in connection with the work performed under a program referred to in subsection (a) or the cost of supervision of work under such program, and may include only such other costs attributable to such programs as are permitted by the Secretary.]

### Assistance by Internal Revenue Service in Locating Parents

Sec. [410] 407 (a). Upon receiving a report from a State agency made pursuant to section 402(a) [(21)] (14), the Secretary shall furnish to the Secretary of the Treasury or his delegate the names and social security account numbers of the parents contained in such report, and the name of the State agency which submitted such report. The Secretary of the Treasury or his delegate shall endeavor to ascertain the address of each such parent from the master files of the Internal Revenue Service, and shall furnish any address so ascertained to the State agency which submitted such report.

(b) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of subsection (a). The Secretary shall transfer to the Secretary of the Treasury from time to time sufficient amounts out of the monies appropriated pursuant to this subsection to enable him to perform his functions under subsection (a).

### Part B—Child-Welfare Services

#### Appropriation

Sec. 420. For the purpose of enabling the United States, through the Secretary, to cooperate with State public welfare agencies in establishing, extending, and strengthening child-welfare services, the following sums are hereby authorized to be appropriated: \$55,000,000 for the fiscal year ending June 30, 1968, \$100,000,000 for the fiscal year ending June 30, 1969, and \$110,000,000 for each fiscal year thereafter.

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### Allotments to States

**Sec. 421.** The sum appropriated pursuant to section 420 for each fiscal year shall be allotted by the Secretary for use by cooperating State public welfare agencies which have plans developed jointly by the State agency and the Secretary, as follows: He shall allot \$70,000 to each State, and shall allot to each State an amount which bears the same ratio to the remainder of the sum so appropriated for such year as the product of (1) the population of such State under the age of 21 and (2) the allotment percentage of such State (as determined under section 423) bears to the sum of the corresponding products of all the States.

### Payment to States

**Sec. 422. (a)** From the sums appropriated therefor and the allotment available under this part, the Secretary shall from time to time pay to each State—

(1) that has a plan for child-welfare services which has been developed as provided in this part and which—

(A) provides that (i) the State agency designated pursuant to section 402(a) (3) to administer or supervise the administration of the plan of the State approved under part A of this title will administer or supervise the administration of such plan for child-welfare services and (ii) to the extent that child-welfare services are furnished by the staff of the State agency or local agency administering such plan for child-welfare services, the organizational unit in such State or local agency established pursuant to section 402(a) [(15)] (9) will be responsible for furnishing such child-welfare services,

(B) provides for coordination between the services provided under such plan and the services provided [for dependent children] *with respect to needy families with children* under the State plan approved under part A of this title, with a view to provision of welfare and related services which will best promote the welfare of such *families and children* [and their families], and

(C) provides, with respect to day care services (including the provision of such care), provided under this title—

(i) for cooperative arrangements with the State health authority and the State agency primarily responsible for State supervision of public schools to assure maximum utilization of such agencies in the provision of necessary health services and education for children receiving day care,

(ii) for an advisory committee, to advise the State public welfare agency on the general policy involved in the provision of day care services under the plan, which shall include among its members representatives of other State agencies concerned with day care or services related thereto and persons representative of professional or civic or other public or nonprofit private agencies, organizations, or groups concerned with the provision of day care,

(iii) for such safeguards as may be necessary to assure provision of day care under the plan only in cases in which it is in the best interest of the child and the mother and only in cases in which it is determined, under criteria established by the State, that a need for such care exists; and, in cases in which the family is able to pay part or all of the costs of such care, for payment of such fees as may be reasonable in the light of such ability,

(iv) for giving priority, in determining the existence of need for such day care, to members of low-income or other groups in the population, and to geographical areas, which have the greatest relative need for extension of such day care, and

(v) that day care provided under the plan will be provided only in facilities (including private homes) which are licensed by the State, or approved (as meeting the standards established for such licensing) by the State agency responsible for licensing facilities of this type, and

(vi) for the development and implementation of arrangements for the more effective involvement of the parent or parents in the appropriate care of the child and the improvement of the health and development of the child, and

(2) that makes a satisfactory showing that the State is extending the provision of child-welfare services in the State, with priority being given to communities with the greatest need for such services after giving consideration to their relative financial need, and with a view to making available by July 1, 1975, in all political subdivisions of the State, for all children in need thereof, child-welfare services provided by the staff (which shall to the extent feasible be composed of trained child-welfare personnel) of the State public welfare agency or of the local agency participating in the administration of the plan in the political subdivision,

except that (effective July 1, 1969, or, if earlier, on the date as of which the modification of the State plan to comply with this requirement with respect to subprofessional staff is approved) such plan shall provide for the training and effective use of paid subprofessional staff with particular emphasis on the full-time or part-time employment of persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in providing services and in assisting any advisory committees established by the State agency, an amount equal to the Federal share (as determined under section 423) of the total sum expended under such plan (including the cost of administration of the plan) in meeting the costs of State, district, county, or other local child-welfare services, in developing State services for the encouragement and assistance of adequate methods of community child-welfare organization, in paying the costs of returning any runaway child who has not attained the age of eighteen to his own community in another State, and of maintaining such child until such return (for a period not exceeding fifteen days), in cases in which such costs cannot be met

by the parents of such child or by any person, agency, or institution legally responsible for the support of such child. In developing such services for children, the facilities and experience of voluntary agencies shall be utilized in accordance with child-care programs and arrangements in the State and local communities as may be authorized by the State.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary shall, prior to the beginning of each period for which a payment is to be made, estimate the amount to be paid to the State for such period under the provisions of subsection (a).

(2) From the allotment available therefor, the Secretary shall pay the amount so estimated, reduced or increased, as the case may be, by any sum (not previously adjusted under this section) by which he finds that his estimate of the amount to be paid the State for any prior period under this section was greater or less than the amount which should have been paid to the State for such prior period under this section.

### Allotment Percentage and Federal Share

**Sec. 423.** (a) The "allotment percentage" for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States; except that (1) the allotment percent shall in no case be less than 30 per centum or more than 70 per centum, and (2) the allotment percentage shall be 70 per centum in the case of Puerto Rico, the Virgin Islands, and Guam.

(b) The "Federal share" for any State for any fiscal year shall be 100 per centum less that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States, except that (1) in no case shall the Federal share be less than  $33\frac{1}{3}$  per centum or more than  $66\frac{2}{3}$  per centum, and (2) the Federal share shall be  $66\frac{2}{3}$  per centum in the case of Puerto Rico, the Virgin Islands, and Guam.

(c) The Federal share and the allotment percentage for each State shall be promulgated by the Secretary between July 1 and August 31 of each even-numbered year, on the basis of the average per capita income of each State and of the United States for the three most recent calendar years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the two fiscal years in the period beginning July 1 next succeeding such promulgation: *Provided*, That the Federal shares and allotment percentages promulgated under section 524(c) of the Social Security Act in 1966 shall be effective for purposes of this section for the fiscal years ending June 30, 1968, and June 30, 1969.

(d) For purposes of this section, the term "United States" means the fifty States and the District of Columbia.

### Reallotment

**Sec. 424.** The amount of any allotment to a State under section 421 for any fiscal year which the State certifies to the Secretary will not be required for carrying out the State plan developed as provided in such section shall be available for reallotment from time to time, on such dates as the Secretary may fix, to other States which the Secretary determines (1) have need in carrying out their State plans so developed for sums in excess of those previously allotted to them under that section and (2) will be able to use such excess amounts during such fiscal year. Such reallotments shall be made on the basis of the State plans so developed, after taking into consideration the population under the age of twenty-one, and the per capita income of each such State as compared with the population under the age of twenty-one, and the per capita income of all such States with respect to which such a determination by the Secretary has been made. Any amount so reallocated to a State shall be deemed part of its allotment under section 421.

### Definition

**Sec. 425.** For purposes of this title, the term "child-welfare services" means public social services which supplement, or substitute for, parental care and supervision for the purpose of (1) preventing or remedying, or assisting in the solution of problems which may result in, the neglect, abuse, exploitation, or delinquency of children, (2) protecting and caring for homeless, dependent, or neglected children, (3) protecting and promoting the welfare of children of working mothers, and (4) otherwise protecting and promoting the welfare of children, including the strengthening of their own homes where possible or, where needed, the provision of adequate care of children away from their homes in foster family homes or day-care or other child-care facilities.

### Research, Training, or Demonstration Projects

**Sec. 426. (a)** There are hereby authorized to be appropriated for each fiscal year such sums as the Congress may determine—

(1) for grants by the Secretary—

(A) to public or other nonprofit institutions of higher learning, and to public or other nonprofit agencies and organizations engaged in research or child-welfare activities, for special research or demonstration projects in the field of child welfare which are of regional or national significance and for special projects for the demonstration of new methods or facilities which show promise of substantial contribution to the advancement of child welfare;

(B) to State or local public agencies responsible for administering, or supervising the administration of, the plan under this part, for projects for the demonstration of the utilization of research (including findings resulting therefrom) in the field of child welfare in order to encourage experimental and special types of welfare services; and

(C) to public or other nonprofit institutions of higher learning for special projects for training personnel for work in the field of child welfare, including traineeships with such stipends and allowances as may be permitted by the Secretary; and

(2) for contracts or jointly financed cooperative arrangements with States and public and other organizations and agencies for the conduct of research, special projects, or demonstration projects relating to such matters.

(b) Payments of grants or under contracts or cooperative arrangements under this section may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine; and shall be made on such conditions as the Secretary finds necessary to carry out the purposes of the grants, contracts, or other arrangements.

### **Adoption and Foster Care Services**

*Sec. 427. (a) For purposes of this section—*

*(1) the term "foster care services", with respect to any State, means—*

*(A) payments for foster care (including medical care not available under the State's plan approved under title XIX or under any other health program within the State) of a child for whom a public agency has responsibility, made to any agency, institution, or person providing such care, but only if such foster care meets standards prescribed by the Secretary, and*

*(B) services and administrative activities related to the foster care of children, such as finding, evaluating, and licensing foster homes and institutions, supervising children in foster homes and institutions, and providing services to enable a child to remain in or return to his own home; and*

*(2) the term "adoption services" means—*

*(A) services and administrative activities related to adoptions, including activities related to judicial proceedings, determinations of the amounts of the payments described in subparagraph (B), location of homes, and all activities related to placement, adoption, and post-adoption services, with respect to any child, and*

*(B) payments (subject to such limitations as the Secretary may by regulation prescribe) to a person or persons adopting a child who is physically or mentally handicapped and who, for that reason, may be difficult to place for adoption, based on the financial ability of such person or persons to meet the medical and other remedial needs of such child.*

*(b) In the case of any State which is eligible for payments under section 422, the Secretary shall, from the amounts allotted therefor, make payments to such State in an amount equal to 75 per centum of any expenditures for adoption services or foster care services.*

*(c) There are authorized to be appropriated, in addition to sums appropriated for purposes of this section pursuant to section 421, for grants to States for adoption services and foster care services, the sum of \$150,000,000 for the fiscal year ending June 30, 1972, the sum of*



*\$165,000,000 for the fiscal year ending June 30, 1973, the sum of \$180,000,000 for the fiscal year ending June 30, 1974, the sum of \$200,000,000 for the fiscal year ending June 30, 1975, and the sum of \$220,000,000 for the fiscal year ending June 30, 1976, and each fiscal year thereafter.*

*(d) From the sum appropriated pursuant to subsection (c), for any fiscal year, there shall be allotted to each State an amount which bears the same ratio to such sum as the number of children under age 21 in such State bears to the number of such children in all the States.<sup>1</sup>*

### **[Part C—Work Incentive Program for Recipients of Aid Under State Plan Approved Under Part A**

#### **[Purpose**

**[Sec. 430.** The purpose of this part is to require the establishment of a program utilizing all available manpower services, including those authorized under other provisions of law, under which individuals receiving aid to families with dependent children will be furnished incentives, opportunities, and necessary services in order for (1) the employment of such individuals in the regular economy, (2) the training of such individuals for work in the regular economy, and (3) the participation of such individuals in special work projects, thus restoring the families of such individuals to independence and useful roles in their communities. It is expected that the individuals participating in the program established under this part will acquire a sense of dignity, self-worth, and confidence which will flow from being recognized as a wage-earning member of society and that the example of a working adult in these families will have beneficial effects on the children in such families.]

#### **[Appropriation**

**[Sec. 431.** There is hereby authorized to be appropriated to the Secretary of Health, Education, and Welfare for each fiscal year a sum sufficient to carry out the purposes of this part. The Secretary of Health, Education, and Welfare shall transfer to the Secretary of Labor from time to time sufficient amounts, out of the moneys appropriated pursuant to this section, to enable him to carry out such purposes.]

#### **[Establishment of Programs**

**[Sec. 432. (a)** The Secretary of Labor (hereinafter in this part referred to as the Secretary) shall, in accordance with the provisions of this part, establish work incentive programs (as provided for in subsection (b) in each State and in each political subdivision of a State in which he determines there is a significant number of individuals who have attained age 16 and are receiving aid to families with dependent children. In other political subdivisions, he shall use his best efforts to provide such programs either within such subdivisions or through the provision of transportation for such persons to political subdivisions of the State in which such programs are established.

**[(b)** Such programs shall include, but shall not be limited to, (1) a program placing as many individuals as is possible in employment,

<sup>1</sup> Effective July 1, 1971.

and utilizing on-the-job training positions for others, (2) a program of institutional and work experience training for those individuals for whom such training is likely to lead to regular employment, and (3) a program of special work projects for individuals for whom a job in the regular economy cannot be found.

[(c) In carrying out the purposes of this part the Secretary may make grants to, or enter into agreements with, public or private agencies or organizations (including Indian tribes with respect to Indians on a reservation), except that no such grant or agreement shall be made to or with a private employer for profit or with a private non-profit employer not organized for a public purpose for purposes of the work experience program established by clause (2) of subsection (b).

[(d) Using funds appropriated under this part, the Secretary, in order to carry out the purposes of this part, shall utilize his authority under the Manpower Development and Training Act of 1962, the Act of June 6, 1933, as amended (48 Stat. 113), and other Acts, to the extent such authority is not inconsistent with this Act.

[(e) The Secretary shall take appropriate steps to assure that the present level of manpower services available under the authority of other statutes to recipients of aid to families with dependent children is not reduced as a result of programs under this part.]

### 【Operation of Program

【Sec. 433. (a) The Secretary shall provide a program of testing and counseling for all persons referred to him by a State, pursuant to section 402, and shall select those persons whom he finds suitable for the programs established by clauses (1) and (2) of section 432(b). Those not so selected shall be deemed suitable for the program established by clause (3) of such section 432(b) unless the Secretary finds that there is good cause for an individual not to participate in such program.

[(b) The Secretary shall develop an employability plan for each suitable person referred to him under section 402 which shall describe the education, training, work experience, and orientation which it is determined that each such person needs to complete in order to enable him to become self-supporting.

[(c) The Secretary shall make maximum use of services available from other Federal and State agencies and, to the extent not otherwise available on a nonreimbursable basis, he may reimburse such agencies for services rendered to persons under this part.

[(d) To the extent practicable and where necessary, work incentive programs established by this part shall include, in addition to the regular counseling, testing, and referral available through the Federal-State Employment Service System, program orientation, basic education, training in communications and employability skills, work experience, institutional training, on-the-job training, job development, and special job placement and followup services, required to assist participants in securing and retaining employment and securing possibilities for advancement.

[(e) (1) In order to develop special work projects under the program established by section 432(b) (3), the Secretary shall enter into agreements with (A) public agencies, (B) private nonprofit organizations established to serve a public purpose, and (C) Indian tribes with

respect to Indians on a reservation, under which individuals deemed suitable for participation in such a program will be provided work which serves a useful public purpose and which would not otherwise be performed by regular employees.

[(2) Such agreements shall provide—

[(A) for the payment by the Secretary to each employer a portion of the wages to be paid by the employer to the individuals for the work performed;

[(B) the hourly wage rate and the number of hours per week individuals will be scheduled to work on special work projects of such employer;

[(C) that the Secretary will have such access to the premises of the employer as he finds necessary to determine whether such employer is carrying out his obligations under the agreement and this part; and

[(D) that the Secretary may terminate any agreement under this subsection at any time.

[(3) The Secretary shall establish one or more accounts in each State with respect to the special work projects established and maintained pursuant to this subsection and place into such accounts the amounts paid to him by the State agency pursuant to section 402(a)(19)(E). The amounts in such accounts shall be available for the payments specified in subparagraph (A) of paragraph (2). At the end of each fiscal year and for such period of time as he may establish, the Secretary shall determine how much of the amounts paid to him by the State agency pursuant to section 402(a)(19)(E) were not expended as provided by the preceding sentence of this paragraph and shall return such unexpended amounts to the State, which amounts shall be regarded as overpayments for purposes of section 403(b)(2).

[(4) No wage rates provided under any agreement entered into under this subsection shall be lower than the applicable minimum wage for the particular work concerned.

[(f) Before entering into a project under any of the programs established by this part, the Secretary shall have reasonable assurances that—

[(1) appropriate standards for the health, safety, and other conditions applicable to the performance of work and training on such project are established and will be maintained,

[(2) such project will not result in the displacement of employed workers,

[(3) with respect to such project the conditions of work, training, education, and employment are reasonable in the light of such factors as the type of work, geographical region, and proficiency of the participant,

[(4) appropriate workmen's compensation protection is provided to all participants.

[(g) Where an individual referred to the Secretary of Labor pursuant to section 402(a)(19)(A)(i) and (ii) refuses without good cause to accept employment or participate in a project under a program established by this part, the Secretary of Labor shall (after providing opportunity for fair hearing) notify the State agency which referred such individual and submit such other information as he may have with respect to such refusal.

[(h) With respect to individuals who are participants in special work projects under the program established by section 432(b)(3), the Secretary shall periodically (but at least once every six months) review the employment record of each such individual while on such special work project and on the basis of such record and such other information as he may acquire determine whether it would be feasible to place such individual in regular employment or on any of the projects under the programs established by section 432(b)(1) and (2).]

### **[Incentive Payment**

[Sec. 434. The Secretary is authorized to pay to any participant under a program established by section 432(b)(2) an incentive payment of not more than \$30 per month, payable in such amounts and at such times as the Secretary prescribes.]

### **[Federal Assistance**

[Sec. 435. (a) Federal assistance under this part shall not exceed [80] 90<sup>1</sup> per centum of the costs of carrying out this part. Non-Federal contributions may be cash or in kind, fairly evaluated, including but not limited to plant, equipment, and services.

[(b) Costs of carrying out this part include costs of training, supervision, materials, administration, incentive payments, transportation, and other items as are authorized by the Secretary, but may not include any reimbursement for time spent by participants in work, training, or other participation in the program; except that with respect to special work projects under the program established by section 432(b)(3), the costs of carrying out this part shall include only the costs of administration.]

### **[Period of Enrollment**

[Sec. 436. (a) The program established by section 432(b)(2) shall be designed by the Secretary so that the average period of enrollment under all projects under such program throughout any area of the United States will not exceed one year.

(b) Services provided under this part may continue to be provided to an individual for such period as the Secretary determines (in accordance with regulations prescribed by the Secretary after consultation with the Secretary of Health, Education, and Welfare) is necessary to qualify him fully for employment even though his earnings disqualify him from aid under a State plan approved under section 402.]

### **[Relocation of Participants**

[Sec. 437. The Secretary may assist participants to relocate their place of residence when he determines such relocation is necessary in order to enable them to become permanently employable and self-supporting. Such assistance shall be given only to participants who concur in their relocation and who will be employed at their place of relocation at wage rates which will meet at least their full need as determined by the State to which they will be relocated. Assistance under this section shall not exceed the reasonable costs of transporta-

<sup>1</sup> Transitional Amendment—90 per centum. Effective July 1, 1971.

tion for participants, their dependents, and their household belongings plus such relocation allowance as the Secretary determines to be reasonable.]

### **[Participants Not Federal Employees**

**[Sec. 438.** Participants in projects under programs established by this part shall be deemed not to be Federal employees and shall not be subject to the provisions of laws relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.]

### **[Rules and Regulations**

**[Sec. 439.** The Secretary may issue such rules and regulations as he finds necessary to carry out the purposes of this part: *Provided*, That in developing policies for programs established by this part the Secretary shall consult with the Secretary of Health, Education, and Welfare.]

### **[Annual Report**

**[Sec. 440.** The Secretary shall annually report to the Congress (with the first such report being made on or before July 1, 1970) on the work incentive programs established by this part.]

### **[Evaluation and Research**

**[Sec. 441.** The Secretary shall (jointly with the Secretary of Health, Education, and Welfare) provide for the continuing evaluation of the work incentive programs established by this part, including their effectiveness in achieving stated goals and their impact on other related programs. He also may conduct research regarding ways to increase the effectiveness of such programs. He may, for this purpose, contract for independent evaluations of and research regarding such programs or individual projects under such programs. For purposes of sections 435 and 443, the costs of carrying out this section shall not be regarded as costs of carrying out work incentive programs established by this part.]

### **[Review of Special Work Projects by a State Panel**

**[Sec. 442. (a)** The Secretary shall make an agreement with any State which is able and willing to do so under which the Governor of the State will create one or more panels to review applications tentatively approved by the Secretary for the special work projects in such State to be established by the Secretary under the program established by section 432(b) (3).

**[(b)** Each such panel shall consist of not more than five and not less than three members, appointed by the Governor. The members shall include one representative of employers and one representative of employees; the remainder shall be representatives of the general public. No special work project under such program developed by the Secretary pursuant to an agreement under section 433(e) (1) shall, in any State which has an agreement under this section, be established or maintained under such program unless such project has first been approved by a panel created pursuant to this section.]

## Sec. 443

**[Collection of State Share**

**[Sec. 443.** If a non-Federal contribution of **[20]** 10<sup>1</sup> per centum of the costs of the work incentive programs established by this part is not made in any State (as specified in section 402(a)), the Secretary of Health, Education, and Welfare may withhold any action under section 404 because of the State's failure to comply substantially with a provision required by section 402. If the Secretary of Health, Education, and Welfare does withhold such action, he shall, after reasonable notice and opportunity for hearing to the appropriate State agency or agencies, withhold any payments to be made to the State under sections 3(a), 403(a), 1003(a), 1403(a), 1603(a), and 1903(a) until the amount so withheld (including any amounts contributed by the State pursuant to the requirement in section 402(a)(19)(C)) equals **[20]** 10<sup>1</sup> per centum of the costs of such work incentive programs. Such withholding shall remain in effect until such time as the Secretary has assurances from the State that such **[20]** 10<sup>1</sup> per centum will be contributed as required by section 402. Amounts so withheld shall be deemed to have been paid to the State under such sections and shall be paid by the Secretary of Health, Education, and Welfare to the Secretary. Such payment shall be considered a non-Federal contribution for purposes of section 435.]

**[Agreements With Other Agencies Providing Assistance to Families of Unemployed Parents**

**[Sec. 444. (a)** The Secretary is authorized to enter into an agreement (in accordance with the succeeding provisions of this section) with any qualified State agency (as described in subsection (b)) under which the program established by the preceding sections of this part C will (except as otherwise provided in this section) be applicable to individuals referred by such State agency in the same manner, to the same extent, and under the same conditions as such program is applicable with respect to individuals referred to the Secretary by a State agency administering or supervising the administration of a State plan approved by the Secretary of Health, Education, and Welfare under part A of this title.

**[(b)** A qualified State agency referred to in subsection (a) is a State agency which is charged with the administration of a program—

**[(1)** the purpose of which is to provide aid or assistance to the families of unemployed parents,

**[(2)** which is not established pursuant to part A of title IV of the Social Security Act,

**[(3)** which is financed entirely from funds appropriated by the Congress, and

**[(4)** none of the financing of which is made available under any program established pursuant to title V of the Economic Opportunity Act.

**[(c)(1)** Any agreement under this section with a qualified State agency shall provide that such agency will, with respect to all individuals receiving aid or assistance under the program of aid or assistance

<sup>1</sup> Transitional Amendment—10 per centum effective July 1, 1971.

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to families of unemployed parents administered by such agency, comply with the requirements imposed by section 402(a) (15) and section 402(a) (19) (F) in the same manner and to the same extent as if (A) such qualified agency were the agency in such State administering or supervising the administration of a State plan approved under part A of this title, and (B) individuals receiving aid or assistance under the program administered by such qualified agency were recipients of aid under a State plan which is so approved.

[(2) Any agreement entered into under this section shall remain in effect for such period as may be specified in the agreement by the Secretary and the qualified State agency, except that, whenever the Secretary determines, after reasonable notice and opportunity for hearing to the qualified State agency, that such agency has failed substantially to comply with its obligations under such agreement, the Secretary may suspend operation of the agreement until such time as he is satisfied that the State agency will no longer fail substantially to comply with its obligations under such agreement.]

[(3) Any such agreement shall further provide that the agreement will be inoperative for any calendar quarter if, for the preceding calendar quarter, the maximum amount of benefits payable under the program of aid or assistance to families of unemployed parents administered by the qualified State agency which is a party to such agreement is lower than the maximum amount of benefits payable under such program for the quarter which ended September 30, 1967.]

[(d) The Secretary shall, at the request of any qualified State agency referred to in subsection (a) of this section, and upon receipt from it of ~~the names of~~ the names of individuals referred to the Secretary, furnish to such agency the names of each individual on such list participating in a special work project under section 433(a) (3) whom the Secretary determines should continue to participate in such project. The Secretary shall not comply with any such request with respect to an individual on such list unless such individual has been referred to the Secretary by such agency under such section 402(a) (15) for a period of at least six months.]

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**TITLE V—MATERNAL AND CHILD HEALTH AND  
CRIPPLED CHILDREN'S SERVICES**

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**Authorization of Appropriations**

Sec. 501. ~~For~~ the purpose of enabling each State to extend and improve (especially in rural areas and in areas suffering from severe economic distress), as far as practicable under the conditions in such State,

(1) services for reducing infant mortality and otherwise promoting the health of mothers and children; and

(2) services for locating, and for medical, surgical, corrective, and other services and care for and facilities for diagnosis, hospitalization, and aftercare for, children who are crippled or who are suffering from conditions leading to crippling,

there are authorized to be appropriated \$250,000,000 for the fiscal year ending June 30, 1969, \$275,000,000 for the fiscal year ending June 30, 1970, \$300,000,000 for the fiscal year ending June 30, 1971, \$325,000,000 for the fiscal year ending June 30, 1972, and \$350,000,000 for the fiscal year ending June 30, 1973, and each fiscal year thereafter.

**Purposes for Which Funds Are Available**

Sec. 502. Appropriations pursuant to section 501 shall be available for the following purposes in the following proportions:

(1) In the case of the fiscal year ending June 30, 1969, and each of the next 3 fiscal years, (A) 50 percent of the appropriation for such year shall be for allotments pursuant to sections 503 and 504; (B) 40 percent thereof shall be for grants pursuant to sections 508, 509, and 510; and (C) 10 percent thereof shall be for grants, contracts, or other arrangements pursuant to sections 511 and 512.

(2) In the case of the fiscal year ending June 30, 1973, and each fiscal year thereafter, (A) 90 percent of the appropriation for such years shall be for allotments pursuant to sections 503 and 504; and (B) 10 percent thereof shall be for grants, contracts, or other arrangements pursuant to sections 511 and 512.

Not to exceed 5 percent of the appropriation for any fiscal year under this section shall be transferred, at the request of the Secretary, from one of the purposes specified in paragraph (1) or (2) to another purpose or purposes so specified. For each fiscal year, the Secretary shall determine the portion of the appropriation, within the percentage determined above to be available for sections 503 and 504, which shall be available for allotment pursuant to section 503 and the portion thereof which shall be available for allotment pursuant to section 504. Notwithstanding the preceding provisions of this section, of the amount appropriated for any fiscal year pursuant to section 501, not less than 6 percent of the amount appropriated shall be available for family planning services from allotments under section 503 and for family planning services under projects under sections 508 and 512.

### **Allotments to States for Maternal and Child Health Services**

**Sec. 503.** The amount determined to be available pursuant to section 502 for allotments under this section shall be allotted for payments for maternal and child health services as follows:

(1) One-half of such amount shall be allotted by allotting to each State \$70,000 plus such part of the remainder of such one-half as he finds that the number of live births in such State bore to the total number of live births in the United States in the latest calendar year for which he has statistics.

(2) The remaining one-half of such amount shall (in addition to the allotments under paragraph (1)) be allotted to the States from time to time according to the financial need of each State for assistance in carrying out its State plan, as determined by the Secretary after taking into consideration the number of live births in such State; except that not more than 25 percent of such one-half shall be available for grants to State agencies (administering or supervising the administration of a State plan approved under section 505), and to public or other nonprofit institutions of higher learning (situated in any State), for special projects of regional or national significance which may contribute to the advancement of maternal and child health.

### **Allotments to States for Crippled Children's Services**

**Sec. 504.** The amount determined to be available pursuant to section 502 for allotments under this section shall be allotted for payments for crippled children's services as follows:

(1) One-half of such amount shall be allotted by allotting to each State \$70,000 and allotting the remainder of such one-half according to the need of each State as determined by him after taking into consideration the number of crippled children in such State in need of the services referred to in paragraph (2) of section 501 and the cost of furnishing such services to them.

(2) The remaining one-half of such amount shall (in addition to the allotments under paragraph (1)) be allotted to the States from time to time according to the financial need of each State for assistance in carrying out its State plan, as determined by the Secretary after taking into consideration the number of crippled children in each State in need of the services referred to in paragraph (2) of section 501 and the cost of furnishing such services to them; except that not more than 25 percent of such one-half shall be available for grants to State agencies (administering or supervising the administration of a State plan approved under section 505), and to public or other nonprofit institutions of higher learning (situated in any State), for special projects of regional or national significance which may contribute to the advancement of services for crippled children.

### Approval of State Plans

**Sec. 505. (a)** In order to be entitled to payments from allotments under section 502, a State must have a State plan for maternal and child health services and services for crippled children which—

(1) provides for financial participation by the State;

(2) provides for the administration of the plan by the State health agency or the supervision of the administration of the plan by the State health agency; except that in the case of those States which on July 1, 1967, provided for administration (or supervision thereof) of the State plan approved under section 513 (as in effect on such date) by a State agency other than the State health agency, the plan of such State may be approved under this section if it would meet the requirements of this subsection except for provision of administration (or supervision thereof) by such other agency for the portion of the plan relating to services for crippled children, and, in each such case, the portion of such plan which each such agency administers, or the administration of which each such agency supervises, shall be regarded as a separate plan for purposes of this title;

(3) provides (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are necessary for the proper and efficient operation of the plan and (B) provides for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in providing services and in assisting any advisory committees established by the State agency;

(4) provides that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as he may from time to time find necessary to assure the correctness and verification of such reports;

(5) provides for cooperation with medical, health, nursing, educational, and welfare groups and organizations and, with respect to the portion of the plan relating to services for crippled children, with any agency in such State charged with administering State laws providing for vocational rehabilitation of physically handicapped children;

(6) provides for payment of the reasonable cost [(as determined in accordance with standards approved by the Secretary and included in the plan)] of inpatient hospital services provided under the plan, *as determined in accordance with methods and standards, consistent with section 1122, which shall be developed by the State and included in the plan, except that the reasonable cost of any such services as determined under such methods and standards shall not exceed the amount which would be determined under section 1861(v) as the reasonable cost of such services for purposes of title XVIII;*

(7) provides, with respect to the portion of the plan relating to services for crippled children, for early identification of children in need of health care and services, and for health care and treatment needed to correct or ameliorate defects or chronic conditions discovered thereby, through provision of such periodic screening and diagnostic services, and such treatment, care and other measures to correct or ameliorate defects or chronic conditions, as may be provided in regulations of the Secretary;

(8) effective July 1, 1972, provides a program (carried out directly or through grants or contracts) of projects described in section 508 which offers reasonable assurance, particularly in areas with concentrations of low-income families, of satisfactorily helping to reduce the incidence of mental retardation and other handicapping conditions caused by complications associated with child bearing and of satisfactorily helping to reduce infant and maternal mortality;

(9) effective July 1, 1972, provides a program (carried out directly or through grants or contracts) of projects described in section 509 which offers reasonable assurance, particularly in areas with concentrations of low-income families, of satisfactorily promoting the health of children and youth of school or preschool age;

(10) effective July 1, 1972, provides a program (carried out directly or through grants or contracts) of projects described in section 510 which offers reasonable assurance, particularly in areas with concentrations of low-income families, of satisfactorily promoting the dental health of children and youth of school or preschool age;

(11) provides for carrying out the purposes specified in section 501;

(12) provides for the development of demonstration services (with special attention to dental care for children and family planning services for mothers) in needy areas and among groups in special need;

(13) provides that, where payment is authorized under the plan for services which an optometrist is licensed to perform, the individual for whom such payment is authorized may, to the extent

practicable, obtain such services from an optometrist licensed to perform such services except where such services are rendered in a clinic, or another appropriate institution, which does not have an arrangement with optometrists so licensed; [and]

(14) provides that acceptance of family planning services provided under the plan shall be voluntary on the part of the individual to whom such services are offered and shall not be a prerequisite to eligibility for or the receipt of any service under the plan [.] ; and

(15) provides—

(A) that the State health agency, or other appropriate State medical agency, shall be responsible for establishing a plan, consistent with regulations prescribed by the Secretary, for the review by appropriate professional health personnel of the appropriateness and quality of care and services furnished to recipients of services under the plan and, where applicable, for providing guidance with respect thereto to the other State agency referred to in paragraph (2); and

(B) that the State or local agency utilized by the Secretary for the purpose specified in the first sentence of section 1864(a), or, if such agency is not the State agency which is responsible for licensing health institutions, the State agency responsible for such licensing, will perform the function of determining whether institutions and agencies meet the requirements for participation in the program under the plan under this title.

(b) The Secretary shall approve any plan which meets the requirements of subsection (a).

### Payments

Sec. 506. (a) From the sums appropriated therefor and the allotments available under section 503(1) or 504(1), as the case may be, the Secretary shall pay to each State which has a plan approved under this title, for each quarter, beginning with the quarter commencing July 1, 1968, an amount, which shall be used exclusively for carrying out the State plan, equal to one-half of the total sum expended during such quarter for carrying out such plan with respect to maternal and child health services and services for crippled children, respectively.

(b) (1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsection (a) for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

(2) The Secretary shall then pay to the State, in such installments as he may determine, the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary

determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) Upon the making of an estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

(c) The Secretary shall also from time to time make payments to the States from their respective allotments pursuant to section 503(2) or 504(2). Payments of grants under sections 503(2), 504(2), 508, 509, 510, and 511, and of grants, contracts, or other arrangements under section 512, may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine; and shall be made on such conditions as the Secretary finds necessary to carry out the purposes of the section involved.

(d) The total amount determined under subsections (a) and (b) and the first sentence of subsection (c) for any fiscal year ending after June 30, 1968, shall be reduced by the amount by which the sum expended (as determined by the Secretary) from non-Federal sources for maternal and child health services and services for crippled children for such year is less than the sum expended from such sources for such services for the fiscal year ending June 30, 1968. In the case of any such reduction, the Secretary shall determine the portion thereof which shall be applied, and the manner of applying such reduction, to the amounts otherwise payable from allotments under section 503 or section 504.

(e) Notwithstanding the preceding provisions of this section, no payment shall be made to any State thereunder from the allotments under section 503 or section 504 for any period after June 30, 1968, unless the State makes a satisfactory showing that it is extending the provisions of services, including services for dental care for children and family planning for mothers, to which such State's plan applies in the State with a view to making such services available by July 1, 1975, to children and mothers in all parts of the State.

(f) *Notwithstanding the preceding provisions of this section, [no payment shall be made to any State thereunder with respect to any amount paid for items or services furnished under the plan after June 30, 1971, to the extent that such amount exceeds the charge which would be determined to be reasonable for such items or services under the third, fourth, and fifth sentences of section 1842(b)(3)] no payment shall be made to any State thereunder—*

*(1) with respect to any amount paid for items or services furnished under the plan after June 30, 1971, to the extent that such amount exceeds the charge which would be determined to be reasonable for such items or services under the fourth and fifth sentences of section 1842(b)(3); or*

*(2) with respect to any amount paid for services furnished under the plan after June 30, 1971, by a provider or other person during any period of time, if payment may not be made under title XVIII with respect to services furnished by such provider or person during such period of time solely by reason of a determination by the Secretary under section 1862(d)(1) or under clause (D), (E), or (F) of section 1866(b) [.] or*

(3) with respect to any amount expended for inpatient hospital services furnished under the plan to the extent that such amount exceeds the hospital's customary charges with respect to such services or (if such services are furnished under the plan by a public institution free of charge or at nominal charges to the public) exceeds an amount determined on the basis of those items (specified in regulations prescribed by the Secretary) included in the determination of such payment which the Secretary finds will provide fair compensation to such institution for such services [ ]; or<sup>1</sup>

(4) with respect to any amount expended for services furnished under the plan by a hospital unless such hospital has in effect a utilization review plan which meets the requirement imposed by section 1861(k) for purposes of title XVIII; and if such hospital has in effect such a utilization review plan for purposes of title XVIII, such plan shall serve as the plan required by this subsection (with the same standards and procedures and the same review committee or group) as a condition of payment under this title.<sup>2</sup>

(g) For limitation on Federal participation for capital expenditures which are out of conformity with a comprehensive plan of a State or area-wide planning agency, see section 1122.

### Operation of State Plans

Sec. 507. If the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this title, finds—

(1) that the plan has been so changed that it no longer complies with the provisions of section 505; or

(2) that in the administration of the plan there is a failure to comply substantially with any such provision;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure), until the Secretary is satisfied that there will no longer be any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

### Special Project Grants for Maternity and Infant Care

Sec. 508. (a) In order to help reduce the incidence of mental retardation and other handicapping conditions caused by complications associated with childbearing and to help reduce infant and maternal mortality, the Secretary is authorized to make, from the sums available under clause (B) of paragraph (1) of section 502, grants to the State health agency of any State and, with the consent of such agency, to the health agency of any political subdivision of the State, and to any

<sup>1</sup> Applies with respect to services furnished by hospitals in accounting periods beginning after June 30, 1971.

<sup>2</sup> Section 506(f) is effective upon enactment, but bracketed material is effective only until July 1, 1972.

other public or nonprofit private agency, institution, or organization, to pay not to exceed 75 percent of the cost (exclusive of general agency overhead) of any project for the provision of:

(1) necessary health care to prospective mothers (including, after childbirth, health care to mothers and their infants), who have or are likely to have conditions associated with childbearing or are in circumstances which increase the hazards to the health of the mothers or their infants (including those which may cause physical or mental defects in the infants), or

(2) necessary health care to infants during their first year of life who have any condition or are in circumstances which increase the hazards to their health, or

(3) family planning services, but only if the State or local agency determines that the recipient will not otherwise receive such necessary health care or services because he is from a low-income family or for other reasons beyond his control. Acceptance of family planning services provided under a project under this section (and section 512) shall be voluntary on the part of the individual to whom such services are offered and shall not be a prerequisite to the eligibility for or the receipt of any service under such project.

(b) No grant may be made under this section for any project for any period after June 30, 1972.

### Special Project Grants for Health of School and Preschool Children

Sec. 509. (a) In order to promote the health of children and youth of school or preschool age, particularly in areas with concentrations of low-income families, the Secretary is authorized to make, from the sums available under clause (B) of paragraph (1) of section 502, grants to the State health agency of any State and (with the consent of such agency), to the health agency of any political subdivision of the State, to the State agency of the State administering or supervising the administration of the State plan approved under section 505, to any school of medicine (with appropriate participation by a school of dentistry), and to any teaching hospital affiliated with such a school, to pay not to exceed 75 percent of the cost of projects of a comprehensive nature for health care and services for children and youth of school age or for preschool children (to help them prepare to start school). No project shall be eligible for a grant under this section unless it provides (1) for the coordination of health care and services provided under it with, and utilization (to the extent feasible) of, other State or local health, welfare, and education programs for such children, (2) for payment of (A) the reasonable cost (as determined in accordance with standards, *consistent with section 1122*, approved by the Secretary) of inpatient hospital services provided under the project, or (B) if less, the customary charges with respect to such services provided under the project, or (C) if such services are furnished under the project by a public institution free of charge or at nominal charges to the public, an amount determined on the basis of



those items (specified in regulations prescribed by the Secretary) included in the determination of such reasonable cost which the Secretary finds will provide fair compensation to such institution for such services,<sup>1</sup> and (3) that any treatment, correction of defects, or aftercare provided under the project is available only to children who would not otherwise receive it because they are from low-income families or for other reasons beyond their control; and no such project for children and youth of school age shall be considered to be of a comprehensive nature for purposes of this section unless it includes (subject to the limitation in the preceding provisions of this sentence) at least such screening, diagnosis, preventive services, treatment, correction of defects, and aftercare, both medical and dental, as may be provided for in regulations of the Secretary.

(b) No grant may be made under this section for any project for any period after June 30, 1972.

### Special Project Grants for Dental Health of Children

**Sec. 510.** (a) In order to promote the dental health of children and youth of school or preschool age, particularly in areas with concentrations of low-income families, the Secretary is authorized to make grants, from the sums available under clause (B) of paragraph (1) of section 502, to the State health agency of any State and (with the consent of such agency) to the health agency of any political subdivision of the State, and to any other public or nonprofit private agency, institution, or organization, to pay not to exceed 75 percent of the cost of projects of a comprehensive nature for dental care and services for children and youth of school age or for preschool children. No project shall be eligible for a grant under this section unless it provides that any treatment, correction of defects, or aftercare provided under the project is available only to children who would not otherwise receive it because they are from low-income families or for other reasons beyond their control, and unless it includes (subject to the limitation of the foregoing provisions of this sentence) at least such preventive services, treatment, correction of defects, and aftercare, for such age groups, as may be provided in regulations of the Secretary. Such projects may also include research looking toward the development of new methods of diagnosis or treatment, or demonstration of the utilization of dental personnel with various levels of training.

(b) No grant may be made under this section for any project for any period after June 30, 1972.

### Training of Personnel

**Sec. 511.** From the sums available under clause (C) of paragraph (1) or clause (B) of paragraph (2) of section 502, the Secretary is authorized to make grants to public or nonprofit private institutions of higher learning for training personnel for health care and related

<sup>1</sup> Applies with respect to services furnished by hospitals in accounting periods beginning after June 30, 1971.

services for mothers and children, particularly mentally retarded children and children with multiple handicaps. In making such grants, the Secretary shall give special attention to programs providing training at the undergraduate level.

### **Research Projects Relating to Maternal and Child Health Services and Crippled Children's Services**

**Sec. 512.** From the sums available under clause (C) of paragraph (1) or clause (B) of paragraph (2) of section 502, the Secretary is authorized to make grants to or jointly financed cooperative arrangements with public or other nonprofit institutions of higher learning, and public or nonprofit private agencies and organizations engaged in research or in maternal and child health or crippled children's programs, and contracts with public or nonprofit private agencies and organizations engaged in research or in such programs, for research projects relating to maternal and child health services or crippled children's services which show promise of substantial contribution to the advancement thereof. Effective with respect to grants made and arrangements entered into after June 30, 1968, (1) special emphasis shall be accorded to projects which will help in studying the need for, and the feasibility, costs, and effectiveness of, comprehensive health care programs in which maximum use is made of health personnel with varying levels of training, and in studying methods of training for such programs, and (2) grants under this section may also include funds for the training of health personnel for work in such projects.

### **Administration**

**Sec. 513. (a)** The Secretary of Health, Education, and Welfare shall make such studies and investigations as will promote the efficient administration of this title.

(b) Such portion of the appropriations for grants under section 501 as the Secretary may determine, but not exceeding one-half of 1 percent thereof, shall be available for evaluation by the Secretary (directly or by grants or contracts) of the programs for which such appropriations are made and, in the case of allotments from any such appropriation, the amount available for allotments shall be reduced accordingly.

(c) Any agency, institution, or organization shall, if and to the extent prescribed by the Secretary, as a condition to receipt of grants under this title, cooperate with the State agency administering or supervising the administration of the State plan approved under title XIX in the provision of care and services, available under a plan or project under this title, for children eligible therefor under such plan approved under title XIX.

### **Definition**

**Sec. 514.** For purposes of this title, a crippled child is an individual under the age of 21 who has an organic disease, defect, or condition which may hinder the achievement of normal growth and development.

### Observance of Religious Beliefs

**Sec. 515.** Nothing in this title shall be construed to require any State which has any plan or program approved under, or receiving financial support under, this title to compel any person to undergo any medical screening, examination, diagnosis, or treatment or to accept any other health care or services provided under such plan or program for any purpose (other than for the purpose of discovering and preventing the spread of infection or contagious disease or for the purpose of protecting environmental health), if such person objects (or, in case such person is a child, his parent or guardian objects) thereto on religious grounds.

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**[TITLE X—GRANTS TO STATES FOR AID TO THE BLIND**

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**[Appropriation**

**[Section 1001.** For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy individuals who are blind and of encouraging each State, as far as practicable under such conditions, to furnish rehabilitation and other services to help such individuals attain or retain capability for self-support or self-care, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health, Education, and Welfare, State plans for aid to the blind.]

**[State Plans for Aid to the Blind**

**[Sec. 1002.** (a) A State plan for aid to the blind must (1) *except to the extent permitted by the Secretary with respect to services,*<sup>1</sup> provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to the blind is denied or is not acted upon with reasonable promptness; (5) provide (A) such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed, in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low-income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency;

<sup>1</sup> Effective upon enactment.

(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; and (7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 2 of this Act or aid to families with dependent children under the State plan approved under section 409 of this Act; (8) provide that the State agency shall, in determining need, take into consideration any other income and resources of the individual claiming aid to the blind, as well as any expenses reasonably attributable to the earning of any such income, except that, in making such determination, the State agency (A) shall disregard the first \$85 per month of earned income, plus one-half of earned income in excess of \$85 per month, (B) shall, for a period not in excess of twelve months, and may, for a period not in excess of thirty-six months, disregard such additional amounts of other income and resources, in the case of an individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, and (C) may, before disregarding the amounts referred to in clauses (A) and (B), disregard not more than \$7.50 of any income; (9) provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of aid to the blind; (10) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (11) effective July 1, 1951, provide that all individuals wishing to make application for aid to the blind shall have opportunity to do so, and that aid to the blind shall be furnished with reasonable promptness to all eligible individuals; (12) effective July 1, 1953, provide, if the plan includes payments to individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; and (13) provide a description of the services (if any) which the State agency makes available to applicants for and recipients of aid to the blind to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services.

[(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a), except that he shall not approve any plan which imposes, as a condition of eligibility for aid to the blind under the plan—

[(1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid and has resided therein continuously for one year immediately preceding the application; or

[(2) Any citizenship requirement which excludes any citizen of the United States.

In the case of any State (other than Puerto Rico and the Virgin Islands) which did not have on January 1, 1949, a State plan for aid

to the blind approved under this title, the Secretary shall approve a plan of such State for aid to the blind for purposes of this title, even though it does not meet the requirements of clause (8) of subsection (a) of this section, if it meets all other requirements of this title for an approved plan for aid to the blind; but payments under section 1003 shall be made, in the case of any such plan, only with respect to expenditures thereunder which would be included as expenditures for the purposes of section 1003 under a plan approved under this section without regard to the provisions of this sentence.]

### [Payments to States

[Sec. 1003. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the blind, for each quarter, beginning with the quarter commencing October 1, 1958—

[(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as aid to the blind under the State plan (including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)—

[(A)  $\frac{31}{100}$  of such expenditures, not counting so much of any expenditure with respect to any month as exceeds the product of \$37 multiplied by the total number of recipients of aid to the blind for such month (which total number, for purposes of this subsection, means (i) the number of individuals who received aid to the blind in the form of money payments for such month, plus (ii) the number of other individuals with respect to whom expenditures were made in such month as aid to the blind in the form of medical or any other type of remedial care); plus

[(B) the Federal percentage of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds the product of \$75 multiplied by the total number of such recipients of aid to the blind for such month; and

[(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as aid to the blind under the State plan (including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof), not counting so much of any expenditure with respect to any month as exceeds \$37.50 multiplied by the total number of recipients of aid to the blind for such month; and

[(3) in the case of any State whose State plan approved under section 1002 meets the requirements of subsection (c)(1) an amount equal to the sum of the following proportions of the total

amounts expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan—

[(A) 75 per centum of so much of such expenditures as are for—

[(i) services which are prescribed pursuant to subsection (c)(1) and are provided (in accordance with the next sentence) to applicants for or recipients of aid to the blind to help them attain or retain capability for self-support or self-care, or

[(ii) other services, specified by the Secretary as likely to prevent or reduce dependency, so provided to such applicants or recipients, or

[(iii) any of the services prescribed pursuant to subsection (c)(1), and of the services specified as provided in clause (ii), which the Secretary may specify as appropriate for individuals who, within such period or periods as the Secretary may prescribe, have been or are likely to become applicants for or recipients of aid to the blind, if such services are requested by such individuals and are provided to such individuals in accordance with the next sentence, or

[(iv) the training of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

[(B) one-half of so much of such expenditures (not included under subparagraph (A)) as are for services provided (in accordance with the next sentence) to applicants for or recipients of aid to the blind, and to individuals requesting such services who (within such period or periods as the Secretary may prescribe) have been or are likely to become applicants for or recipients of such aid; plus

[(C) one-half of the remainder of such expenditures.

[The services referred to in subparagraph (A) and (B) shall, except to the extent specified by the Secretary, include only—

[(D) services provided by the staff of the State agency, or of the local agency administering the State plan in the political subdivision: *Provided*, That no funds authorized under this title shall be available for services defined as vocational rehabilitation services under the Vocational Rehabilitation Act (i) which are available to individuals in need of them under programs for their rehabilitation carried on under a State plan approved under such Act, or (ii) which the State agency or agencies administering or supervising the administration of the State plan approved under such Act are able and willing to provide if reimbursed for the cost thereof pursuant to agreement under subparagraph (E); if provided by such staff, and

[(E) subject to limitations prescribed by the Secretary, services which in the judgment of the State agency cannot be as economically or as effectively provided by the staff of such State or local agency and are not otherwise reasonably avail-



able to individuals in need of them, and which are provided, pursuant to agreement with the State agency, by the State health authority or the State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act or by any other State agency which the Secretary may determine to be appropriate (whether provided by its staff or by contract with public (local) or nonprofit private agencies);

except that services described in clause (ii) of subparagraph (D) hereof may be provided only pursuant to agreement with such State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services so approved. The portion of the amount expended for administration of the State plan to which subparagraph (A) applies and the portion thereof to which subparagraphs (B) and (C) apply shall be determined in accordance with such methods and procedures as may be permitted by the Secretary; and

[(4) in the case of any State whose State plan approved under section 1002 does not meet the requirements of subsection (c) (1), an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan, including services referred to in paragraph (3) and provided in accordance with the provisions of such paragraph.

[(b) The method of computing and paying such amounts shall be as follows:

[(1) The Secretary of Health, Education, and Welfare shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of blind individuals in the State, and (C) such other investigation as the Secretary may find necessary.

[(2) The Secretary of Health, Education, and Welfare shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health, Education, and Welfare, (A) reduced or increased, as the case may be, by any sum by which the Secretary of Health, Education, and Welfare finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State under subsection (a) for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health, Education, and Welfare, of the net amount recovered during a prior quarter by the State or any political subdivision thereof with respect to aid to the blind fur-

provided under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health, Education, and Welfare for such prior quarter: *Provided*, That any part of the amount recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased shall not be considered as a basis for reduction under clause (B) of this paragraph:

[(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department, and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Health, Education, and Welfare, the amounts so certified.

[(c) (1) In order for a State to qualify for payments under paragraph (3) of subsection (a), its State plan approved under section 1002 must provide that the State agency shall make available to applicants for or recipients of aid to the blind at least those services to help them attain or retain capability for self-support or self-care which are prescribed by the Secretary.

[(2) In the case of any State whose State plan included a provision meeting the requirements of paragraph (1), but with respect to which the Secretary finds, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, that—

[(A) the provision has been so changed that it no longer complies with the requirements of paragraph (1), or

[(B) in the administration of the plan there is a failure to comply substantially with such provision,

the Secretary shall notify such State agency that further payments will not be made to the State under paragraph (3) of subsection (a) until he is satisfied that there will no longer be any such failure to comply. Until the Secretary is so satisfied further payments with respect to the administration of such State plan shall not be made under paragraph (3) of subsection (a) but shall instead be made, subject to the other provisions of this title, under paragraph (4) of such subsection.]

### Operation of State Plans

[Sec. 1004. In the case of any State plan for aid to the blind which has been approved by the Secretary of Health, Education, and Welfare, if the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

[(1) that the plan has been so changed as to impose any residence or citizenship requirement prohibited by section 1002(b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

[(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 1002(a) to be included in the plan;





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**Definitions**

**Section 1101. (a) When used in this Act—**

(1) The term "State", except where otherwise provided, includes the District of Columbia and the Commonwealth of Puerto Rico, and when used in titles [I,] IV, V, VII, [X,] XI, [XIV,] XVI, [and] XIX, XX, and XXI includes the Virgin Islands and Guam. *Such term when used in title V also includes American Samoa and the Trust Territory of the Pacific Islands.*

(2) The term "United States" when used in a geographical sense means, except where otherwise provided, the States.

(3) The term "person" means an individual, a trust or estate, a partnership, or a corporation.

(4) The term "corporation" includes associations, joint-stock companies, and insurance companies.

(5) The term "shareholder" includes a member in an association, joint-stock company, or insurance company.

(6) The term "Secretary", except when the context otherwise requires (*and when used in part C or D of title XXI*), means the Secretary of Health, Education, and Welfare.

(7) The terms "physician" and "medical care" and "hospitalization" include osteopathic practitioners or the services of osteopathic practitioners and hospitals within the scope of their practice as defined by State law.

(8) (A) The "Federal percentage" for any State (other than Puerto Rico, the Virgin Islands, and Guam) shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 50 per centum as the square of the per capita income of such State bears to the square of the per capita income of the United States; except that the Federal percentage shall in no case be less than 50 per centum or more than 65 per centum.

(B) The Federal percentage for each State (other than Puerto Rico, the Virgin Islands, and Guam) shall be promulgated by the Secretary between July 1 and August 31 of each even-numbered year, on the basis of the average per capita income of each State and of the United States for the three most recent calendar years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the eight quarters in the period beginning July 1 next succeeding such promulgation: *Provided*, That the Secretary shall promulgate such percentage as soon as possible after the enactment of the Social Security Amendments of 1958, which promulgation shall be conclusive for each of the eleven quarters in the period beginning October 1, 1958, and ending with the close of June 30, 1961.

(C) The term "United States" means (but only for purposes of subparagraphs (A) and (B) of this paragraph) the fifty States and the District of Columbia.

(D) Promulgations made before satisfactory data are available from the Department of Commerce for a full year on the per capita income of Alaska shall prescribe a Federal percentage for Alaska of 50 per centum and, for purposes of such promulgations, Alaska shall not be included as part of the "United States". Promulgations made thereafter but before per capita income data for Alaska for a full three-year period are available from the Department of Commerce shall be based on satisfactory data available therefrom for Alaska for such one full year or, when such data are available for a two-year period, for such two years.

(b) The terms "includes" and "including" when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(c) Whenever under this Act or any Act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for the purposes of this Act the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

(d) Nothing in this Act shall be construed as authorizing any Federal official, agent, or representative, in carrying out any of the provisions of this Act, to take charge of any child over the objection of either of the parents of such child, or of the person standing in loco parentis to such child.

### Rules and Regulations

Sec. 1102. The Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare, respectively, shall make and publish such rules and regulations, not inconsistent with this Act, as may be necessary to the efficient administration of the functions with which each is charged under this Act.

### Separability

Sec. 1103. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

### Reservation of Power

Sec. 1104. The right to alter, amend, or repeal any provision of this Act is hereby reserved to the Congress.

### Short Title

Sec. 1105. This Act may be cited as the "Social Security Act."

### Disclosure of Information in Possession of Department

Sec. 1106. (a) No disclosure of any return or portion of a return (including information returns and other written statements) filed with the Commissioner of Internal Revenue under title VIII of the Social Security Act or under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code of 1939, or under chapter 2 or 21, or, pursuant thereto, under subtitle F of the Internal Revenue Code of 1954, or under regulations made under authority thereof, which has been transmitted to the Secretary of Health, Education, and Welfare by the Commissioner of Internal Revenue, or of any file, record, report, or other paper, or any information, obtained at any time by the Secretary or by any officer or employee of the Department of Health, Education, and Welfare in the course of discharging the duties of the Secretary under this Act, and no disclosure of any such file, record, report, or other paper, or information, obtained at any time by any person from the Secretary or from any officer or employee of the Department of Health, Education, and Welfare, shall be made except as the Secretary may by regulations prescribe. Any person who shall violate any provision of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding \$1,000, or by imprisonment not exceeding one year, or both.

(b) Requests for information, disclosure of which is authorized by regulations prescribed pursuant to subsection (a) of this section, and requests for services, may, subject to such limitations as may be prescribed by the Secretary to avoid undue interference with his functions under this Act, be complied with if the agency, person, or organization making the request agrees to pay for the information or services requested in such amount, if any (not exceeding the cost of furnishing the information or services), as may be determined by the Secretary. Payments for information or services furnished pursuant to this section shall be made in advance or by way of reimbursement, as may be requested by the Secretary, and shall be deposited in the Treasury as a special deposit to be used to reimburse the appropriations (including authorizations to make expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund) for the unit or units of the Department of Health, Education, and Welfare which furnished the information or services.

(c) (1) (A) Upon request (filed in accordance with paragraph (2) of this subsection) of any State or local agency participating in administration of the State plan approved under title [I, X, XIV] XVI or XIX, or part A of title IV, or participating in the administration of any other State or local public assistance program, for the most recent address of any individual included in the files of the Department of Health, Education, and Welfare maintained pursuant to section 205, the Secretary shall furnish such address, or the address of the most recent employer, or both, if such agency certifies that—

(i) an order has been issued by a court of competent jurisdiction against such individual for the support and maintenance of his child or children who are under the age of 16 in destitute or necessitous circumstances,

(ii) such child or children are applicants for or recipients of assistance available under such a plan or program,

(iii) such agency has attempted without success to secure such information from all other sources reasonably available to it, and

(iv) such information is requested (for its own use, or on the request and for the use of the court which issued the order) for the purpose of obtaining such support and maintenance.

(B) If a request for the most recent address of any individual so included is filed (in accordance with paragraph (2) of this subsection) by a court having jurisdiction to issue orders or entertain petitions against individuals for the support and maintenance of their children, the Secretary shall furnish such address, or the address of the individual's most recent employer, or both, for the use of the court (and for no other purpose) in issuing or determining whether to issue such an order against such individual or in determining (in the event such individual is not within the jurisdiction of the court) the court to which a petition for support and maintenance against such individual should be forwarded under any reciprocal arrangements with other States to obtain or improve court orders for support, if the court certifies that the information is requested for such use.

(2) A request under paragraph (1) shall be filed in such manner and form as the Secretary may prescribe (and, in the case of a request



under paragraph (1) (A), shall be accompanied by a certified copy of the order referred to in clauses (i) and (iv) thereof).

(3) The penalties provided in the second sentence of subsection (a) shall apply with respect to use of information provided under paragraph (1) of this subsection except for the purpose authorized by subparagraph (A) (iv) or (B) thereof.

(4) The Secretary, in such cases and to such extent as he may prescribe in accordance with regulations, may require payment for the cost of information provided under paragraph (1); and the provisions of the second sentence of subsection (b) shall apply also with respect to payment under this paragraph.

### Penalty for Fraud

**Sec. 1107.** (a) Whoever, with the intent to defraud any person, shall make or cause to be made any false representation concerning the requirements of this Act, subchapter E of chapter 1 or subchapter A, C, or E of chapter 9 of the Internal Revenue Code of 1939, or chapter 2, 21, or 23 or section 6011(a), 6017, or 6051(a) of the Internal Revenue Code of 1954 or of any rules or regulations issued thereunder, knowing such representations to be false, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$1,000, or by imprisonment not exceeding one year, or both.

(b) Whoever, with the intent to elicit information as to the date of birth, employment, wages, or benefits of any individual (1) falsely represents to the Secretary of Health, Education, and Welfare that he is such individual, or the wife, husband, widow, widower, former wife divorced, child, or parent of such individual, or the duly authorized agent of such individual, or of the wife, husband, widow, widower, former wife divorced, child, or parent of such individual, or (2) falsely represents to any person that he is an employee or agent of the United States, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$1,000, or by imprisonment not exceeding one year, or both.

### Limitation on Payments to Puerto Rico, the Virgin Islands, and Guam

**Sec. 1108.** (a) The total amount certified by the Secretary of Health, Education, and Welfare under title I, X, XIV, and XVI, and under part A of title IV (exclusive of any amounts on account of services and items to which subsection (b) applies)—

(1) for payment to Puerto Rico shall not exceed—

(A) \$12,500,000 with respect to the fiscal year 1968,

(B) \$15,000,000 with respect to the fiscal year 1969,

(C) \$18,000,000 with respect to the fiscal year 1970,

(D) \$21,000,000 with respect to the fiscal year 1971, or

(E) \$24,000,000 with respect to the fiscal year 1972 [and each fiscal year thereafter]:

(2) for payment to the Virgin Islands shall not exceed—

(A) \$425,000 with respect to the fiscal year 1968,

(B) \$500,000 with respect to the fiscal year 1969,

(C) \$600,000 with respect to the fiscal year 1970,  
 (D) \$700,000 with respect to the fiscal year 1971, or  
 (E) \$800,000 with respect to the fiscal year 1972 [and each  
 fiscal year thereafter] and

(8) for payment to Guam shall not exceed—  
 (A) \$575,000 with respect to the fiscal year 1968,  
 (B) \$690,000 with respect to the fiscal year 1969,  
 (C) \$825,000 with respect to the fiscal year 1970,  
 (D) \$950,000 with respect to the fiscal year 1971, or  
 (E) \$1,100,000 with respect to the fiscal year 1972 [and  
 each fiscal year thereafter].

(b) The total amount certified by the Secretary under part A of  
 title IV, on account of family planning services and services provided  
 under section 402(a)(19) with respect to any fiscal year—

(1) for payment to Puerto Rico shall not exceed \$2,000,000.  
 (2) for payment to the Virgin Islands shall not exceed  
 \$65,000, and

(3) for payment to Guam shall not exceed \$90,000.]  
 (c) The total amount certified by the Secretary under title XIX  
 with respect to any fiscal year—

(1) for payment to Puerto Rico shall not exceed [\$20,000,000]  
 \$30,000,000,  
 (2) for payment to the Virgin Islands shall not exceed \$650,000,  
 and

(3) for payment to Guam shall not exceed \$900,000.

(d) Notwithstanding the provisions of sections 502(a) and 512(a)  
 of this Act, and the provisions of sections 421, 503(1), and 504(1) of  
 this Act as amended by the Social Security Amendments of 1967,  
 and until such time as the Congress may by appropriation or other  
 law otherwise provide, the Secretary shall, in lieu of the initial allot-  
 ment specified in such sections, allot such smaller amounts to Guam,  
 American Samoa, and the Trust Territory of the Pacific Islands as he  
 may deem appropriate.

(e) (1) In applying the provisions of—

- (A) subsections (a), (b), and (e) (1) of section 2011,
- (B) subsections (a) (2) (D) and (b) (2) of section 2012,
- (C) subsection (a) of section 2013,
- (D) subsections (a), (b), and (c) of section 2152,
- (E) subsections (a) (2) (C) and (b) (2) of section 2153, and  
 the last sentence of subsection (b) of such section, and
- (F) the last sentence of section 2154(a),

with respect to Puerto Rico, the Virgin Islands, or Guam, the dollar  
 amounts to be used shall, instead of the figures specified in such pro-  
 visions, be dollar amounts bearing the same ratio to the figures so spec-  
 ified as the per capita incomes of Puerto Rico, the Virgin Islands, and  
 Guam, respectively, bear to the per capita income of that one of the  
 States which has the lowest per capita income; except that in no case  
 may the amounts so used exceed the figures so specified.

(2) (A) The amounts to be used under such sections in Puerto Rico,  
 the Virgin Islands, and Guam shall be promulgated by the Secretary  
 between July 1 and September 30 of each odd-numbered year, on the  
 basis of the average per capita income of each State for the most re-  
 cent calendar year for which satisfactory data are available from the

*Department of Commerce. Such promulgation shall be effective for each of the two fiscal years in the period beginning July 1 next succeeding such promulgation.*

*(B) The term "State", for purposes of subparagraph (A) only, means the fifty States and the District of Columbia.*

*(3) If the amounts which would otherwise be promulgated for any fiscal year for any of the three States referred to in paragraph (1) would be lower than the amounts promulgated for such State for the immediately preceding period, the amounts for such fiscal year shall be increased to the extent of the difference; and the amounts so increased shall be the amounts promulgated for such year.*

### **Amounts Disregarded Not To Be Taken Into Account in Determining Eligibility of Other Individuals**

**Sec. 1109.** Any amount which is disregarded [(or set aside for future needs)] in determining the eligibility [of] for and amount of [the aid or assistance for] payments to any individual [under a State plan approved under title I, X, XIV, XVI, or XIX, or part A of title IV,] pursuant to title XX or any family pursuant to part A or B of title XXI, shall not be taken into consideration in determining the eligibility [of] for or [and] amount of [aid or assistance for any other individual under a State plan approved under any other of such titles] such payments to any other individual or family under such title XX of part A or B of title XXI.

### **Cooperative Research or Demonstration Projects**

**Sec. 1110. (a)** There are hereby authorized to be appropriated for the fiscal year ending June 30, 1957, \$5,000,000 and for each fiscal year thereafter such sums as the Congress may determine for (1) making grants to States and public and other nonprofit organizations and agencies for paying part of the cost of research or demonstration projects such as those relating to the prevention and reduction of dependency, or which will aid in effecting coordination of planning between private and public welfare agencies or which will help improve the administration and effectiveness of programs carried on or assisted under the Social Security Act and programs related thereto, and (2) making contracts or jointly financed cooperative arrangements with States and public and other organizations and agencies for the conduct of research or demonstration projects relating to such matters.

(b) No contract or jointly financed cooperative arrangement shall be entered into, and no grant shall be made, under subsection (a), until the Secretary obtains the advice and recommendations of specialists who are competent to evaluate the proposed project as to soundness of their design, the possibilities of securing productive results, the adequacy of resources to conduct the proposed research or demonstrations, and their relationship to other similar research or demonstrations already completed or in process.

(c) Grants and payments under contracts or cooperative arrangements under subsection (a) may be made either in advance or by way of reimbursement, as may be determined by the Secretary; and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purposes of this section.

### Public Assistance Payments to Legal Representatives

**Sec. 1111.** For purposes of title [I, X, XIV, and XVI, and Part A of title IV] *XX, or part A or B of title XXI*, payments on behalf of an individual, made to another person who has been judicially appointed, under the law of the State in which such individual resides, as legal representative of such individual for the purpose of receiving and managing such payments (whether or not he is such individual's legal representative for other purposes), shall be regarded as money payments to such individual.

### Medical Care Guides and Reports for Public Assistance and Medical Assistance

**Sec. 1112.** In order to assist the States to extend the scope and content, and improve the quality, of medical care and medical services for which payments are made to or on behalf of needy and low-income individuals under this Act and in order to promote better public understanding about medical care and medical assistance for needy and low-income individuals, the Secretary shall develop and revise from time to time guides or recommended standards as to the level, content, and quality of medical care and medical services for the use of the States in evaluating and improving their public assistance medical care programs and their programs of medical assistance; shall secure periodic reports from the States on items included in, and the quantity of, medical care and medical services for which expenditures under such programs are made; and shall from time to time publish data secured from these reports and other information necessary to carry out the purposes of this section.

### Assistance for United States Citizens Returned From Foreign Countries

**Sec. 1113.** (a) (1) The Secretary is authorized to provide temporary assistance to citizens of the United States and to dependents of citizens of the United States, if they (A) are identified by the Department of State as having returned, or been brought, from a foreign country to the United States because of the destitution of the citizen of the United States or the illness of such citizen or any of his dependents or because of war, threat of war, invasion, or similar crisis, and (B) are without available resources.

(2) Except in such cases or classes of cases as are set forth in regulations of the Secretary, provision shall be made for reimbursement to the United States by the recipients of the temporary assistance to cover the cost thereof.

(3) The Secretary may provide assistance under paragraph (1) directly or through utilization of the services and facilities of appropriate public or private agencies and organizations, in accordance with agreements providing for payment, in advance or by way of reimbursement, as may be determined by the Secretary, of the cost thereof. Such cost shall be determined by such statistical, sampling, or other method as may be provided in the agreement.

(b) The Secretary is authorized to develop plans and make arrangements for provision of temporary assistance within the United

States to individuals specified in subsection (a) (1). Such plans shall be developed and such arrangements shall be made after consultation with the Secretary of State, the Attorney General, and the Secretary of Defense. To the extent feasible, assistance provided under subsection (a) shall be provided in accordance with the plans developed pursuant to this subsection, as modified from time to time by the Secretary.

(c) For purposes of this section, the term "temporary assistance" means money payments, medical care, temporary billeting, transportation, and other goods and services necessary for the health or welfare of individuals (including guidance, counseling, and other welfare services) furnished to them within the United States upon their arrival in the United States and for such period after their arrival as may be provided in regulations of the Secretary.

(d) No temporary assistance may be provided under this section after June 30, 1973.

#### **Appointment of Advisory Council and Other Advisory Groups**

**Sec. 1114.** (a) The Secretary shall, during 1964, appoint an Advisory Council on Public Welfare for the purpose of reviewing the administration of the public assistance and child welfare services programs for which funds are appropriated pursuant to this Act and making recommendations for improvement of such administration, and reviewing the status of and making recommendations with respect to the public assistance programs for which funds are so appropriated, especially in relation to the old-age, survivors, and disability insurance program, with respect to the fiscal capacities of the States and the Federal Government, and with respect to any other matters bearing on the amount and proportion of the Federal and State shares in the public assistance and child welfare services programs.

(b) The Council shall be appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and shall consist of twelve persons who shall, to the extent possible, be representatives of employers and employees in equal numbers, representatives of State or Federal agencies concerned with the administration or financing of the public assistance and child welfare services programs, representatives of non-profit private organizations concerned with social welfare programs, other persons with special knowledge, experience, or qualifications with respect to such programs, and members of the public.

(c) The Council is authorized to engage such technical assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Council such secretarial, clerical, and other assistance and such pertinent data prepared by the Department of Health, Education, and Welfare as it may require to carry out such functions.

(d) The Council shall make a report of its findings and recommendations (including recommendations for changes in the provisions of the Social Security Act) to the Secretary, such report to be submitted not later than July 1, 1966, after which date such Council shall cease to exist.

(e) The Secretary shall also from time to time thereafter appoint an Advisory Council on Public Welfare, with the same functions and constituted in the same manner as prescribed for the Advisory Council in the preceding subsections of this section. Each Council so appointed shall report its findings and recommendations, as prescribed in subsection (d), not later than July 1 of the second year after the year in which it is appointed, after which date such Council shall cease to exist.

(f) The Secretary may also appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, such advisory committees as he may deem advisable to advise and consult with him in carrying out any of his functions under this Act. The Secretary shall report to the Congress annually on the number of such committees and on the membership and activities of each such committee.

(g) Members of the Council or of any advisory committee appointed under this section who are not regular full-time employees of the United States shall, while serving on business of the Council or any such committee be entitled to receive compensation at rates fixed by the Secretary, but not exceeding \$75 per day, including travel time; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code for persons in Government service employed intermittently.

(h) (1) Any member of the Council or any advisory committee appointed under this Act, who is not a regular full-time employee of the United States, is hereby exempted, with respect to such appointment, from the operation of sections 281, 283, and 1914 of title 18 of the United States Code, and section 190 of the Revised Statutes (5 U.S.C. 99), except as otherwise specified in paragraph (2) of this subsection.

(2) The exemption granted by paragraph (1) shall not extend—

(A) to the receipt or payment of salary in connection with the appointee's Government service from any source other than the employer of the appointee at the time of his appointment, or

(B) during the period of such appointment, to the prosecution or participation in the prosecution, by any person so appointed, of any claim against the Government involving any matter with which such person, during such period, is or was directly connected by reason of such appointment.

### Demonstration Projects

Sec. 1115. In the case of any experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives of title [I, X, XIV,] XVI or XIX, or part A of title IV, in a State or States—

(a) the Secretary may waive compliance with any of the requirements of section [2,] 402, [1002, 1402,] 1602, or 1902, as the case may be, to the extent and for the period he finds necessary to enable such State or States to carry out such project, and

(b) costs of such project which would not otherwise be included as expenditures under section [3,] 403, [1003, 1403,] 1603, or 1903, as the case may be, and which are not included as part of the costs of projects under section 1110, shall, to the extent and for the period prescribed by the Secretary, be regarded as expenditures under the State plan or plans approved under such title, or for administration of such State plan or plans, as may be appropriate.

In addition, not to exceed \$4,000,000 of the aggregate amount appropriated for payments to States under such titles for any fiscal year beginning after June 30, 1967, shall be available, under such terms and conditions as the Secretary may establish, for payments to States to cover so much of the cost of such projects as is not covered by payments under such titles and is not included as part of the cost of projects for purposes of section 1110.

### Administrative and Judicial Review of Certain Administrative Determinations

Sec. 1116. (a) (1) Whenever a State plan is submitted to the Secretary by a State for approval under title [I, X, XIV,] XVI or XIX, or part A of title IV, he shall not later than 90 days after the date the plan is submitted to him, make a determination as to whether it conforms to the requirements for approval under such title. The 90-day period provided herein may be extended by written agreement of the Secretary and the affected State.

(2) Any State dissatisfied with a determination of the Secretary under paragraph (1) with respect to any plan may, within 60 days after it has been notified of such determination, file a petition with the Secretary for reconsideration of the issue of whether such plan conforms to the requirements for approval under such title. Within 30 days after receipt of such a petition, the Secretary shall notify the State of the time and place at which a hearing will be held for the purpose of reconsidering such issue. Such hearing shall be held not less than 20 days nor more than 60 days after the date notice of such hearing is furnished to such State, unless the Secretary and such State agree in writing to holding the hearing at another time. The Secretary shall affirm, modify, or reverse his original determination within 60 days of the conclusion of the hearing.

(3) Any State which is dissatisfied with a final determination made by the Secretary on such a reconsideration or a final determination of the Secretary under section [4,] 404, [1004, 1404,] 1604, or 1904 may, within 60 days after it has been notified of such determination, file with the United States court of appeals for the circuit in which such State is located a petition for review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his determination as provided in section 2112 of title 28, United States Code.

(4) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive: but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court

the transcript and record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(b) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(b) For the purposes of subsection (a), any amendment of a State plan approved under title [I, X, XIV,] XVI or XIX, or part A of title IV, may, at the option of the State, be treated as the submission of a new State plan.

(c) Action pursuant to an initial determination of the Secretary described in subsection (a) shall not be stayed pending reconsideration, but in the event that the Secretary subsequently determines that his initial determination was incorrect he shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied.

(d) Whenever the Secretary determines that any item or class of items on account of which Federal financial participation is claimed under title [I, X, XIV,] XVI or XIX, or part A of title IV, shall be disallowed for such participation, the State shall be entitled to and upon request shall receive a reconsideration of the disallowance.

(e)<sup>1</sup> In any case in which the Secretary determines that a State has failed in a substantial number of cases—

(1) to make payments as required by title [I, X, XIV, XVI, or] XIX [or part A of title IV], or

(2) to make payments in the amount prescribed under the appropriate State plan (which complies with the conditions for approval under such title or part),

he may require the State to make retroactive payment to all persons affected by such failure in order to assure, to the maximum extent possible, that with respect to each such person the sum of the aid or assistance actually received during the period in which such failure occurred plus such retroactive payments are equal to the amount of aid or assistance he would have received for such period had such failure not occurred, but such payments shall not be required with respect to any period prior to the date of the enactment of the Social Security Amendments of 1971. Expenditures for such retroactive payments shall be considered to have been made under the State plan approved under such title or part for purposes of determining the amount of the Federal payment with respect to such plan. In any case in which the Secretary does add such a requirement for retroactive payments pursuant to the preceding provisions of this subsection, the State shall disregard the amount of such retroactive payments for purposes of determining the amount of aid or assistance payable to such persons after such failure has been corrected. The Secretary may prescribe such methods of administration as he finds necessary to carry out a requirement for retroactive payments imposed under this subsection and such requirement and methods shall be deemed necessary for the proper and efficient operation of the plan under which such failure occurred.

<sup>1</sup> Effective upon enactment. The material in brackets is deleted effective July 1, 1972.



(f)<sup>1</sup> In any case in which the Secretary has found, in accordance with the procedures of title [I, X, XIV,] XVI or XIX, or part A of title IV, that in the administration of the State plan approved under such title or part there is a failure to comply substantially with any provision which is required by such title or part to be included in such plan, the Secretary may prescribe such methods of administration as he finds appropriate to correct such administrative non-compliance within a reasonable period of time and, upon obtaining assurances satisfactory to him that such methods will be undertaken (including a timetable for implementation of such methods which specifies a date by which there will no longer exist such administrative noncompliance), he may, instead of withholding payments under the title or part with respect to which such failure occurred, continue to make payments (in accordance with such title or part) to such State with respect to expenditures under such plan (for so long as he remains satisfied that the timetable is being substantially followed).

(g)<sup>1</sup> If the Secretary has reason to believe that a State plan which he has approved under title [I, X, XIV,] XVI or XIX, or part A of title IV, no longer complies with all requirements of such title or part, or that in the administration of such plan there is a failure to comply substantially with any such requirements, the Secretary may (in addition to or instead of withholding payments under such title or part) request the Attorney General to bring suit to enforce such requirements.

#### [Alternative Federal Payment With Respect to Public Assistance Expenditures

[Sec. 1118. In the case of any State which has in effect a plan approved under title XIX for any calendar quarter, the total of the payments to which such State is entitled for such quarter, and for each succeeding quarter in the same fiscal year (which for purposes of this section means the 4 calendar quarters ending with June 30), under paragraphs (1) and (2) of sections 3(a), 403(a), 1003(a), 1403(a), and 1603(a) shall, at the option of the State, be determined by application of the Federal medical assistance percentage (as defined in section 1905), instead of the percentages provided under each such section, to the expenditures under its State plans approved under titles I, X, XIV, and XVI, and part A of title IV, which would be included in determining the amounts of the Federal payments to which such State is entitled under such sections, but without regard to any maximum on the dollar amounts per recipient which may be counted under such sections.]

#### Federal Participation in Payments for Repairs to Home Owned by Recipient of Aid or Assistance

Sec. 1119. In the case of an expenditure for repairing the home owned by an individual who is receiving [aid or assistance, other than medical assistance to the aged, under a State plan approved under title I, X, XIV, or XVI, or part A of title IV] services under a State plan approved under part A of title IV or under title XVI if—

<sup>1</sup> Effective upon enactment. The material in brackets is deleted effective July 1, 1972.

(1) the State agency or local agency administering the plan approved under such title has made a finding (prior to making such expenditure) that (A) such home is so defective that continued occupancy is unwarranted, (B) unless repairs are made to such home, rental quarters will be necessary for such individual, and (C) the cost of rental quarters to take care of the needs of such individual (including his spouse living with him in such home and any other individual whose needs were taken into account in determining the need of such individual) would exceed (over such time as the Secretary may specify) the cost of repairs needed to make such home habitable together with other costs attributable to continued occupancy of such home, and

(2) no such expenditures were made for repairing such home pursuant to any prior finding under this section, the amount paid to any such State for any quarter under section [3(a)] 403(a) [1003(a), 1403(a)] or 1603(a) shall be increased by 50 per centum of such expenditures, except that the excess above \$500 expended with respect to any one home shall not be included in determining such expenditures.

### Approval of Certain Projects

**Sec. 1120. (a)** No payment shall be made under this Act with respect to any experimental, pilot, demonstration, or other project all or any part of which is wholly financed with Federal funds made available under this Act (without any State, local, or other non-Federal financial participation) unless such project shall have been personally approved by the Secretary or Under Secretary of Health, Education, and Welfare.

(b) As soon as possible after the approval of any project under subsection (a), the Secretary shall submit to the Congress a description of such project including a statement of its purpose, probable cost, and expected duration.

### [Assistance in the Form of Institutional Services in Intermediate Care Facilities<sup>1</sup>

**[Sec. 1121. (a)** Any State which has in effect a plan for old-age assistance, approved under title I, a plan for aid to the blind, approved under title X, a plan for aid to the permanently and totally disabled, approved under title XIV, or a plan for aid to the aged, blind, or disabled, approved under title XVI, may, on or after January 1, 1968, modify such plan to include therein benefits in the form of institutional services in intermediate care facilities for individuals who are entitled (or would, if not receiving institutional services in intermediate care facilities, be entitled) to assistance, under such plan, in the form of money payments.

**[(b)** Any modification pursuant to subsection (a) shall provide that benefits in the form of institutional services in intermediate care facilities will be provided only to individuals who—

**[(1)** are entitled (or would, if not receiving institutional services in intermediate care facilities, be entitled) to receive aid or assistance, under the State plan, in the form of money payments;

<sup>1</sup> Sec. 1121 repealed effective Jan. 1, 1972.

[(2) because of their physical or mental condition (or both), require living accommodations and care which, as a practical matter, can be made available to them only through institutional facilities; and

[(3) do not have such an illness, disease, injury, or other condition as to require the degree of care and treatment which a hospital or skilled nursing home (as that term is employed in title XIX) is designed to provide.

[(c) Payments to any State which modifies its approved State plan (referred to in subsection (a)), to provide, to the recipients of aid or assistance thereunder, benefits in the form of institutional services in intermediate care facilities shall be made in the same manner and from the same appropriation as payments made with respect to expenditures under the State plan so modified, except that, with respect to expenditures made by the State in paying the cost of benefits in the form of institutional services in intermediate care facilities for any quarter, the Secretary shall, if the State so elects, pay to each State an amount equal to the Federal medical assistance percentage (as defined in section 1905(b)).

[(d) Except when inconsistent with the purposes of this section or contrary to any provision of this section, any modification, pursuant to this section, of an approved State plan shall be subject to the same conditions, limitations, rights, and obligations as obtain with respect to such approved State plan.

[(e) For purposes of this section, the term "intermediate care facility" means an institution or distinct part thereof which (1) is licensed, under State law, to provide the patients or residents thereof, on a regular basis, the range or level of care and services which is suitable to the needs of individuals described in subsection (b)(2) and (3), but which does not provide the degree of care required to be provided by a skilled nursing home furnishing services under a State plan approved under title XIX, and (2) meets such standards of safety and sanitation as are applicable to nursing homes under State law; except that in no case shall such term include an institution which does not regularly provide a level of care and service beyond room and board. The term "intermediate care facility" also includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts, but only with respect to institutional services deemed appropriate by the State.]

#### ***Limitation on Federal Participation for Capital Expenditures<sup>1</sup>***

*Sec. 1122. (a) The purpose of this section is to assure that Federal funds appropriated under titles V, XVIII, and XIX are not used to support unnecessary capital expenditures made by or on behalf of health care facilities or health maintenance organizations which are reimbursed under any of such titles and that, to the extent possible, reimbursement under such titles shall support planning activities with respect to health services and facilities in the various States.*

<sup>1</sup> Applies only with respect to a capital expenditure the obligation for which is incurred by or on behalf of a health care facility or health maintenance organization subsequent to whichever of the following is earlier: (A) June 30, 1972, or (B) with respect to any State or any part thereof specified by such State, the last day of the calendar quarter in which the State requests that the amendment made by subsection (a) of this section apply in such State or such part thereof.

(b) *The Secretary, after consultation with the Governor (or other chief executive officer) and with appropriate local public officials, shall make an agreement with any State which is able and willing to do so under which a designated planning agency (which shall be an agency described in clause (ii) of subsection (d) (1) (B) that has a governing body or advisory board at least half of whose members represent consumer interests) will—*

(1) *make, and submit to the Secretary together with such supporting materials as he may find necessary, findings and recommendations with respect to capital expenditures proposed by or on behalf of any health care facility or health maintenance organization in such State within the field of its responsibilities,*

(2) *receive from other agencies described in clause (ii) of subsection (d) (1) (B), and submit to the Secretary together with such supporting material as he may find necessary, the findings and recommendations of such other agencies with respect to capital expenditures proposed by or on behalf of health care facilities or health maintenance organizations in such State within the fields of their respective responsibilities, and*

(3) *establish and maintain procedures pursuant to which a person proposing any such capital expenditure may appeal a recommendation by the designated agency and will be granted an opportunity for a fair hearing by such agency or person other than the designated agency as the Governor (or other chief executive officer) may designate to hold such hearings,*

*whenever and to the extent that the findings of such designated agency or any such other agency indicate that any such expenditure is not consistent with the standards, criteria, or plans developed pursuant to the Public Health Service Act (or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963) to meet the need for adequate health care facilities in the area covered by the plan or plans so developed.*

(c) *The Secretary shall pay any such State from the Federal Hospital Insurance Trust Fund, in advance or by way of reimbursement as may be provided in the agreement with it (and may make adjustments in such payments on account of overpayments or underpayments previously made), for the reasonable cost of performing the functions specified in subsection (b).*

(d) (1) *Except as provided in paragraph (2), if the Secretary determines that—*

(A) *neither the planning agency designated in the agreement described in subsection (b) nor an agency described in clause (ii) of subparagraph (B) of this paragraph had been given notice of any proposed capital expenditure (in accordance with such procedure or in such detail as may be required by such agency) at least 60 days prior to obligation for such expenditure; or*

(B) (i) *the planning agency so designated or an agency so described had received such timely notice of the intention to make such capital expenditure and had within a reasonable period after receiving such notice and prior to obligation for such expenditure, notified the person proposing such expenditure that the expenditure would not be in conformity with the*

standards, criteria, or plans developed by such agency or any other agency described in clause (ii) for adequate health care facilities in such State or in the area for which such other agency has responsibility, and

(ii) the planning agency so designated had, prior to submitting to the Secretary the findings referred to in subsection (b)—

(I) consulted with, and taken into consideration the findings and recommendations of, the State planning agencies established pursuant to sections 314(a) and 604(a) of the Public Health Service Act (to the extent that either such agency is not the agency so designated) as well as the public or nonprofit private agency or organization responsible for the comprehensive regional, metropolitan area, or other local area plan or plans referred to in section 314(b) of the Public Health Service Act and covering the area in which the health care facility or health maintenance organization proposing such capital expenditure is located (where such agency is not the agency designated in the agreement), or, if there is no such agency, such other public or nonprofit private agency or organization (if any) as performs, as determined in accordance with criteria included in regulations, similar functions, and

(II) granted to the person proposing such capital expenditure an opportunity for a fair hearing with respect to such findings;

then, for such period as he finds necessary in any case to effectuate the purpose of this section, he shall, in determining the Federal payments to be made under titles V, XVIII, and XIX with respect to services furnished in the health care facility for which such capital expenditure is made, not include any amount which is attributable to depreciation, interest on borrowed funds, a return on equity capital (in the case of proprietary facilities), or other expenses related to such capital expenditure. With respect to any organization which is reimbursed on a per capita basis, in determining the Federal payments to be made under titles V, XVIII, and XIX, the Secretary shall exclude an amount which in his judgment is a reasonable equivalent to the amount which would otherwise be excluded under this subsection if payment were to be made on other than a per capita basis.

(2) If the Secretary, after submitting the matters involved to the advisory council established or designated under subsection (i), determines that an exclusion of expenses related to any capital expenditure of any health care facility or health maintenance organization would discourage the operation or expansion of such facility or organization, or of any facility of such organization, which has demonstrated to his satisfaction proof of capability to provide comprehensive health care services (including institutional services) efficiently, effectively, and economically, or would otherwise be inconsistent with the effective organization and delivery of health services or the effective administration of title V, XVIII, or XIX, he shall not exclude such expenses pursuant to paragraph (1).

(e) Where a person obtains under lease or comparable arrangement any facility or part thereof, or equipment for a facility, which would have been subject to an exclusion under subsection (d) if the person had acquired it by purchase, the Secretary shall (1) in computing

such person's rental expense in determining the Federal payments to be made under titles V, XVIII, and XIX with respect to services furnished in such facility, deduct the amount which in his judgment is a reasonable equivalent of the amount that would have been excluded if the person had acquired such facility or such equipment by purchase, and (2) in computing such person's return on equity capital deduct any amount deposited under the terms of the lease or comparable arrangement.

(f) Any person dissatisfied with a determination by the Secretary under this section may within six months following notification of such determination request the Secretary to reconsider such determination. A determination by the Secretary under this section shall not be subject to administrative or judicial review.

(g) For the purposes of this section, a "capital expenditure" is an expenditure which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance and which (1) exceeds \$100,000, (2) changes the bed capacity of the facility with respect to which such expenditure is made, or (3) substantially changes the services of the facility with respect to which such expenditure is made. For purposes of clause (1) of the preceding sentence, the cost of the studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of the plant and equipment with respect to which such expenditure is made shall be included in determining whether such expenditure exceeds \$100,000.

(h) The provisions of this section shall not apply to Christian Science sanatoriums operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.

(i) (1) The Secretary shall establish a national advisory council, or designate an appropriate existing national advisory council, to advise and assist him in the preparation of general regulations to carry out the purposes of this section and on policy matters arising in the administration of this section, including the coordination of activities under this section with those under other parts of this Act or under other Federal or federally assisted health programs.

(2) The Secretary shall make appropriate provision for consultation between and coordination of the work of the advisory council established or designated under paragraph (1) and the Federal Hospital Council, the National Advisory Health Council, the Health Insurance Benefits Advisory Council, the Medical Assistance Advisory Council, and other appropriate national advisory councils with respect to matters bearing on the purposes and administration of this section and the coordination of activities under this section with related Federal health programs.

(3) If an advisory council is established by the Secretary under paragraph (1), it shall be composed of members who are not otherwise in the regular full-time employ of the United States, and who shall be appointed by the Secretary without regard to the civil service laws from among leaders in the fields of the fundamental sciences, the medical sciences, and the organization, delivery, and financing of health care, and persons who are State or local officials or are active in community affairs or public or civic affairs or who are representative of minority groups. Members of such advisory council, while attending meetings of the council or otherwise serving on business of the council,

shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the maximum rate specified at the time of such service for grade GS-18 in section 5332 of title 5, United States Code, including traveltime, and while away from their homes or regular places of business they may also be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703(b) of such title 5 for persons in the Government service employed intermittently.

### **Program for Determining Qualifications for Certain Health Care Personnel**

**SEC. 1123. (a)** The Secretary, in carrying out his functions relating to the qualifications for health care personnel under title XVIII, shall develop (in consultation with appropriate professional health organizations and State health and licensure agencies) and conduct (in conjunction with State health and licensure agencies) a program designed to determine the proficiency of individuals (who do not otherwise meet the formal educational, professional membership, or other specific criteria established for determining the qualifications of practical nurses, therapists, laboratory technicians and technologists, X-ray technicians, psychiatric technicians, or other health care technicians) to perform the duties and functions of practical nurses, therapists, laboratory technicians and technologists, X-ray technicians, psychiatric technicians, or other health care technicians. Such program shall include (but not be limited to) the employment of procedures for the formal testing of the proficiency of individuals. In the conduct of such program, no individual who otherwise meets the proficiency requirements for any health care specialty shall be denied a satisfactory proficiency rating solely because of his failure to meet formal educational or professional membership requirements.

(b) If any individual has been determined, under the program established pursuant to subsection (a), to be qualified to perform the duties and functions of any health care specialty, no person or provider utilizing the services of such individual to perform such duties and functions shall be denied payment, under title XVIII or under any State plan approved under title XIX, for any health care services provided by such person on the grounds that such individual is not qualified to perform such duties and functions.

### **Determinations of Medicaid Eligibility**

**SEC. 1124.** The Secretary of Health, Education, and Welfare may enter into an agreement with any State which wishes to do so under which he (or the Secretary of Labor with respect to individuals eligible for benefits under part A of title XXI) will determine eligibility for medical assistance in any or all cases under such State's plan approved under title XIX. Any such agreement shall provide for payment by the State, for use by the Secretary in carrying out the agreement, of an amount equal to one-half of the cost of carrying out the agreement, but in computing such cost with respect to individuals eligible for benefits under title XX or under part A or part B of title XXI the Secretary shall include only those costs which are additional to the costs incurred in carrying out such title or such part.



**[Separation of Social Services and Cash Assistance Payments]<sup>1</sup>**

**[Sec. 1125. Each State in the administration of its State plans approved under section 2, 402, 1002, 1402, or 1602, shall develop and submit to the Secretary on or before January 1, 1972, a proposal (1) providing that, to the extent services under any such State plan are furnished by the staff of the State or local agency administering such plan in any political subdivision of such State, such staff will be located, by July 1, 1972, in organizational units (up to such organizational levels as the Secretary may prescribe) which are separate and distinct from the units within such agencies responsible for determining eligibility for any form of cash assistance paid on a regularly recurring basis or for performing any functions directly related thereto, but subject to any exceptions which, in accordance with standards prescribed in regulations, the Secretary may permit when he deems it necessary in order to ensure the efficient administration of such plan, and (2) indicating the steps to be taken and the methods to be followed in carrying out the proposal.]**

**Authorization and Allotment of Appropriations for Services**

**Sec. 1125. (a) There are authorized to be appropriated, for the fiscal year ending June 30, 1973, and for each fiscal year thereafter, for payments to States under sections 403 and 1603 with respect to expenditures for training of personnel, services to the aged, blind, or disabled, and services for any individual receiving assistance to needy families with children, such sums as may be necessary; except that the amount so appropriated for payments with respect to expenditures other than expenditures for the services described in paragraphs (1) and (2) of section 405(d) shall not exceed \$800,000,000 for the fiscal year ending June 30, 1973, or such sum as the Congress may specify for any fiscal year thereafter.**

**(b) From the sums appropriated pursuant to subsection (a) for any fiscal year—**

**(1) the Secretary shall allot to each State an amount which bears the same ratio to the amount so appropriated as the Federal share of expenditures in such State in the preceding fiscal year (exclusive of amounts reallocated to such State for such preceding fiscal year under subsection (c)) for services under title[s I, X, XIV, and] XVI,<sup>2</sup> and part A of title IV (other than for child care and family planning services under such part), and for training under such title[s]<sup>3</sup> and such part, bears to the total such Federal share in all the States, but in no case shall such amount with respect to any State for any fiscal year exceed the Federal share of such expenditures in such State in the preceding fiscal year (exclusive of any amounts reallocated to such State for such preceding fiscal year under subsection (c));**

<sup>1</sup> Effective upon enactment. Effective July 1, 1972 this section is repealed and a new sec. 1125 is added.

<sup>2</sup> Effective July 1, 1973, the phrase, "services under titles I, X, XIV, and XVI," is deleted and replaced by the phrase, "services under title XVI".

<sup>3</sup> Effective July 1, 1973, the word "titles", is deleted and replaced by the word, "title".



(2) after the allotment pursuant to paragraph (1) has been made, from the sums remaining (if any) not in excess of \$50,000,000, the Secretary shall allot to each State which has a service deficit (as defined in the last sentence of this subsection) an amount which bears the same ratio to such sums remaining as such deficit bears to the total of the service deficits of all the States having such deficits; and

(3) after the allotment pursuant to paragraph (2) has been made, from the sums remaining (if any), the Secretary shall allot to each State an amount which bears the same ratio to such sums remaining as the number of individuals receiving benefits under sections 2011 and 2102 in such State bears to the number of such individuals in all the States.

As used in paragraph (2), the term "service deficit", with respect to any State, means the amount by which (i) the average service expenditure (as defined in subsection (d)) per recipient of benefits under sections 2011 and 2102 in such State is less than (ii) the average of the expenditures for training and services under titles I, X, XIV and XVI<sup>1</sup> and part A of title IV in all the States (other than child care and family planning services under such part) multiplied by the number of recipients of such benefits in such State.

(c) The amount of any allotment pursuant to subsection (b) for any fiscal year which the Secretary determines will not be required for providing training and services described in subsection (a) under part A of title IV or under title XVI, shall be available for reallocation, for the same purposes for which it was originally made available, from time to time, on such dates as the Secretary may fix, to other States which the Secretary determines have need in providing such training and services of amounts in excess of those previously allotted to them under subsection (b), giving particular consideration to the needs of States for reallocations to prevent reduction or termination of any such services or training which are being provided.

(d) For purposes of subsection (b) (2), the term "average service expenditure" with respect to a State for any fiscal year means the amount obtained by dividing (1) the Federal share of expenditures in such State in the preceding fiscal year (exclusive of amounts reallocated to such State for such preceding fiscal year under subsection (c)) for training and services under titles I, X, XIV, XVI,<sup>1</sup> and part A of title IV (other than child care and family planning services under such part), by (2) the number of individuals in the State receiving benefits under sections 2011 and 2102.

\* \* \* \* \*

<sup>1</sup> Effective July 1, 1973, the phrase, "services under titles I, X, XIV, and XVI," is deleted and replaced by the phrase, "services under title XVI".

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**[TITLE XIV—GRANTS TO STATES FOR AID TO THE PERMANENTLY AND TOTALLY DISABLED]**

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**[Appropriation**

**[Section 1401.** For the purpose of enabling each State to furnish financial assistance, as far as practicable under the condition in such State, to needy individuals eighteen years of age and older who are permanently and totally disabled and of encouraging each State, as far as practicable under such conditions, to furnish rehabilitation and other services to help such individuals attain or retain capability for self-support or self-care, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health, Education, and Welfare, State plans for aid to the permanently and totally disabled.

**[State Plans for Aid to the Permanently and Totally Disabled**

**[Sec. 1402.** (a) A State plan for aid to the permanently and totally disabled must (1) *except to the extent permitted by the Secretary with respect to services,*<sup>1</sup> provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to the permanently and totally disabled is denied or is not acted upon with reasonable promptness; (5) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting

<sup>1</sup> Effective upon enactment.

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any advisory committees established by the State agency; (6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; (7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 2 of this Act, aid to families with dependent children under the State plan approved under section 402 of this Act, or aid to the blind under the State plan approved under section 1002 of this Act; (8) provide that the State agency shall, in determining need, take into consideration any other income and resources of an individual claiming aid to the permanently and totally disabled, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination, (A) the State agency may disregard not more than \$7.50 of any income, (B) of the first \$80 per month of additional income which is earned the State agency may disregard not more than the first \$20 thereof plus one-half of the remainder, and (C) the State agency may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the case of an individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, but only with respect to the part or parts of such period during substantially all of which he is actually undergoing vocational rehabilitation; (9) provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of aid to the permanently and totally disabled; (10) provide that all individuals wishing to make application for aid to the permanently and totally disabled shall have opportunity to do so, and that aid to the permanently and totally disabled shall be furnished with reasonable promptness to all eligible individuals; (11) effective July 1, 1953, provide, if the plan includes payments to individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; and (12) provide a description of the services (if any) which the State agency makes available to applicants for and recipients of aid to the permanently and totally disabled to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services.

[(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a), except that he shall not approve any plan which imposes, as a condition of eligibility for aid to the permanently and totally disabled under the plan—

[(1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid to the permanently and totally disabled and has resided therein continuously for one year immediately preceding the application;

[(2) Any citizenship requirement which excludes any citizen of the United States.

### [Payments to States

**[Sec. 1403. (a)** From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the permanently and totally disabled, for each quarter, beginning with the quarter commencing October 1, 1958—

**[(1)** in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as aid to the permanently and totally disabled under the State plan (including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)—

**[(A)**  $\frac{31}{100}$  of such expenditures, not counting so much of any expenditure with respect to any month as exceeds the product of \$37 multiplied by the total number of recipients of aid to the permanently and totally disabled for such month (which total number, for purposes of this subsection, means (i) the number of individuals who received aid to the permanently and totally disabled in the form of money payments for such month, plus (ii) the number of other individuals with respect to whom expenditures were made in such month as aid to the permanently and totally disabled in the form of medical or any other type of remedial care); plus

**[(B)** the Federal percentage of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds the product of \$75 multiplied by the total number of such recipients of aid to the permanently and totally disabled for such month; and

**[(2)** in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as aid to the permanently and totally disabled under the State plan (including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof), not counting so much of any expenditure with respect to any month as exceeds \$3.50 multiplied by the total number of recipients of aid to the permanently and totally disabled for such months; and

**[(3)** in the case of any State whose State plan approved under section 1402 meets the requirements of subsection (c)(1), an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan—

**[(A)** 75 per centum of so much of such expenditures as are for—

**[(i)** services which are prescribed pursuant to subsection (c)(1) and are provided (in accordance with the next sentence) to applicants for or recipients of aid to

the permanently and totally disabled to help them attain or retain capability of self-support or self-care, or

[(ii) other services, specified by the Secretary as likely to prevent or reduce dependency, so provided to such applicants or recipients, or

[(iii) any of the services prescribed pursuant to subsection (c) (1), and of the services specified as provided in clause (ii), which the Secretary may specify as appropriate for individuals who, within such period or periods as the Secretary may prescribe, have been or are likely to become applicants for or recipients of aid to the permanently and totally disabled, if such services are requested by such individuals and are provided to such individuals in accordance with the next sentence, or

[(iv) the training of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

[(B) one-half of so much of such expenditures (not included under subparagraph (A)), as are for services provided in accordance with the next sentence) to applicants for or recipients of aid to the permanently and totally disabled, and to individuals requesting such services who (within such period or periods as the Secretary may prescribe) have been or are likely to become applicants for or recipients of such aid; plus

[(C) one-half of the remainder of such expenditures.

[The services referred to in subparagraphs (A) and (B) shall except to the extent specified by the Secretary, include only—

[(D) services provided by the staff of the State agency, or of the local agency administering the State plan in the political subdivision: *Provided*, That no funds authorized under this title shall be available for services defined as vocational rehabilitation services under the Vocational Rehabilitation Act (i) which are available to individuals in need of them under programs for their rehabilitation carried on under a State plan approved under such Act, or (ii) which the State agency or agencies administering or supervising the administration of the State plan approved under such Act are able and willing to provide if reimbursed for the cost thereof pursuant to agreement under subparagraph (E), if provided by such staff, and

[(E) subject to limitations prescribed by the Secretary, services which in the judgment of the State agency cannot be as economically or as effectively provided by the staff of such State or local agency and are not otherwise reasonably available to individuals in need of them, and which are provided, pursuant to agreement with the State agency, by the State health authority or the State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act or by any other State agency

which the Secretary may determine to be appropriate (whether provided by its staff or by contract with public (local or nonprofit private agencies);

except that services described in clause (ii) of subparagraph (D) hereof may be provided only pursuant to agreement with such State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services so approved. The portion of the amount expended for administration of the State plan to which subparagraph (A) applies and the portion thereof to which subparagraphs (B) and (C) apply shall be determined in accordance with such methods and procedures as may be permitted by the Secretary; and

[(4) in the case of any State whose State plan approved under section 1402 does not meet the requirements of subsection (c) (1), an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan, including services referred to in paragraph (3) and provided in accordance with the provisions of such paragraph.

[(b) The method of computing and paying such amounts shall be as follows:

[(1) The Secretary of Health, Education, and Welfare shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of permanently and totally disabled individuals in the State, and (C) such other investigation as the Secretary may find necessary.

[(2) The Secretary of Health, Education, and Welfare shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health, Education, and Welfare, (A) reduced or increased, as the case may be, by any sum by which the Secretary of Health, Education, and Welfare finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State under subsection (a) for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health, Education, and Welfare, of the net amount recovered during a prior quarter by the State or any political subdivision thereof with respect to aid to the permanently and totally disabled furnished under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health, Education,

and Welfare for such prior quarter: *Provided*, That any part of the amount recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased shall not be considered as a basis for reduction under clause (B) of this paragraph.

[(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department, and prior to audit or settlement by the General Accounting Office, paid to the State, at the time or times fixed by the Secretary of Health, Education, and Welfare, the amount so certified.

[(c) (1) In order for a State to qualify for payments under paragraph (3) of subsection (a), its State plan approved under section 1402 must provide that the State agency shall make available to applicants for or recipients of aid to the permanently and totally disabled at least those services to help them attain or retain capability for self-support or self-care which are prescribed by the Secretary.

[(2) In the case of any State whose State plan included a provision meeting the requirements of paragraph (1), but with respect to which the Secretary finds, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, that—

[(A) the provision has been so changed that it no longer complies with the requirements of paragraph (1), or

[(B) in the administration of the plan there is a failure to comply substantially with such provision,

the Secretary shall notify such State agency that further payments will not be made to the State under paragraph (3) of subsection (a) until he is satisfied that there will no longer be any such failure to comply. Until the Secretary is so satisfied further payments with respect to the administration of such State plan shall not be made under paragraph (3) of subsection (a) but shall instead be made, subject to the other provisions of this title, under paragraph (4) of such subsection.

### **[Operations of State Plans**

[Sec. 1404. In the case of any State plan for aid to the permanently and totally disabled which has been approved by the Secretary of Health, Education, and Welfare, if the Secretary after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

[(1) that the plan has been so changed as to impose any residence or citizenship requirements prohibited by section 1402(b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

[(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 1402 (a) to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until he is satisfied that such prohibited requirement



is no longer so imposed and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

### 【Definition

【Sec. 1405. For the purposes of this title, the term "aid to the permanently and totally disabled" means money payments to, or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of, or any type of remedial care recognized under State law in behalf of, needy individuals eighteen years of age or older who are permanently and totally disabled, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution) or any individual who is a patient in an institution for tuberculosis or mental diseases. Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 1402 includes provision for

【(1) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such aid through payments described in this sentence;

【(2) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to the permanently and totally disabled to be paid (and in conjunction with other income and resources), meet all the need of the individuals with respect to whom such payments are made;

【(3) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible, his capacity for self-care and to manage funds;

【(4) periodic review by such State agency of the determination under paragraph (1) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1111, if and when it appears that such action will best serve the interests of such needy individual; and

【(5) opportunity for a fair hearing before the State agency on the determination referred to in paragraph (1) for any individual with respect to whom it is made.

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**TITLE XVI—GRANTS TO STATES FOR [AID] SERVICES TO THE AGED, BLIND, OR DISABLED[, OR FOR SUCH AID AND MEDICAL ASSISTANCE FOR THE AGED]**

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**Appropriation**

**Section 1601.** For the purpose [(a)] of [enabling] *encouraging* each State, as far as practicable under the conditions in such State, to furnish [financial assistance to] *rehabilitation and other services to help* needy individuals who are 65 years of age or over, are blind, or are [18 years of age or over and permanently and totally disabled, (b) of enabling each State, as far as practicable under the conditions in such State, to furnish medical assistance on behalf of individuals who are 65 years of age or over and who are not recipients of aid to the aged, blind, or disabled but whose income and resources are insufficient to meet the costs of necessary medical services, and (c) of encouraging each State, as far as practicable under the conditions in such State, to furnish rehabilitation and other services to help individuals referred to in clause (a) or (b)] to attain or retain capability for self-support or self-care, there is hereby authorized to be appropriated for each fiscal year *subject to Section 1125* a sum sufficient to carry out the purposes of this title. [The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health, Education, and Welfare, State plans for [aid] services to the aged, blind, or disabled, or for aid to the aged, blind, or disabled and medical assistance for the aged.]

**State Plans for [Aid] Services to the Aged, Blind, or Disabled  
[, or for Such Aid and Medical Assistance for the Aged]**

**Section 1602.** (a) A State plan for [aid] services to the aged, blind, or disabled, [or for aid to the aged, blind, or disabled and medical assistance for the aged,] must—

(1) *except to the extent permitted by the Secretary [with respect to services]*<sup>1</sup> provide that it shall be in effect in all political subdivisions of the State, and if administered by them, be mandatory upon them:

(2) provide for financial participation by the State;

<sup>1</sup> Effective upon enactment. Effective July 1, 1972, the phrase, "with respect to services" is deleted.

(3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;

[(4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid or assistance under the plan is denied or is not acted upon with reasonable promptness;]

[(5)] (4) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of [recipients and other] persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services [to applicants and recipients] *under the plan* and in assisting any advisory committees established by the State agency;

[(6)] (5) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

[(7)] (6) provide safeguards which restrict the use or disclosure of information concerning [applicants and recipients] *persons seeking or receiving services under the plan* to purposes directly connected with the administration of the plan;

[(8) provide that all individuals wishing to make application for aid or assistance under the plan shall have opportunity to do so, and that such aid or assistance shall be furnished with reasonable promptness to all eligible individuals;]

[(9)] (7) provide, if the plan includes [aid or assistance] *services* to [or on behalf of] individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions;

[(10)] (8) provide a description of the services [(if any)] which the State agency makes available [to applicants for or recipients of aid or assistance] under the plan [to help them attain self-support or self-care], including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services;

[(11) provide that no aid or assistance will be furnished any individual under the plan with respect to any period with respect to which he is receiving assistance under the State plan approved under title I or aid under the State plan approved under part A of title IV or under title X or XIV;]

[(12)](9) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select;

[(13)](10) include reasonable standards, consistent with the objectives of this title, for determining eligibility for and the extent of [aid or assistance] *services* under the plan;

[(14)] provide that the State agency shall, in determining need for aid to the aged, blind, or disabled, take into consideration any other income and resources of an individual claiming such aid, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination with respect to any individual—

[(A)] if such individual is blind, the State agency (i) shall disregard the first \$85 per month of earned income plus one-half of earned income in excess of \$85 per month, and (ii) shall, for a period not in excess of 12 months, and may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the case of any such individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan,

[(B)] if such individual is not blind but is permanently and totally disabled, (i) of the first \$80 per month of earned income, the State agency may disregard not more than the first \$20 thereof plus one-half of the remainder, and (ii) the State agency may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the case of any such individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, but only with respect to the part or parts of such period during substantially all of which he is actually undergoing vocational rehabilitation,

[(C)] if such individual has attained age 65 and is neither blind nor permanently and totally disabled, of the first \$80 per month of earned income the State agency may disregard not more than the first \$20 thereof plus one-half of the remainder, and

[(D)] the State agency may, before disregarding the amounts referred to above in this paragraph (14), disregard not more than \$7.50 of any income;

[(15)] if the State plan includes medical assistance for the aged—

[(A)] provide for inclusion of some institutional and some noninstitutional care and services;

[(B)] provide that no enrollment fee, premium, or similar charge will be imposed as a condition of any individual's eligibility for medical assistance for the aged under the plan;

[(C)] provide for inclusion, to the extent required by regulations prescribed by the Secretary, of provisions (conforming to such regulations) with respect to the furnishing of

such assistance to individuals who are residents of the State but are absent therefrom; and

[(D) provide that no lien may be imposed against the property of any individual prior to his death on account of medical assistance for the aged paid or to be paid on his behalf under the plan (except pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual), and that there shall be no adjustment or recovery (except, after the death of such individual and his surviving spouse, if any, from such individual's estate) of any medical assistance for the aged correctly paid on behalf of such individual under the plan;]

[(16)] (11) if the State plan includes [aid or assistance to or in behalf of] *services to individuals 65 years of age or older who are patients in institutions for mental diseases—*

(A) provide for having in effect such agreements or other arrangements with State authorities concerned with mental diseases, and where appropriate, with such institutions, as may be necessary for carrying out the State plan, including arrangements for joint planning and for development of alternate methods of care, arrangements providing assurance of immediate readmittance to institutions where needed for individuals under alternate plans of care, and arrangements providing for access to patients and facilities, for furnishing information, and for making reports;

(B) provide for an individual plan for each such patient to assure that the institutional care provided to him is in his best interests, including, to that end, assurances that there will be initial and periodic review of his medical and other needs, that he will be given appropriate medical treatment within the institution, and that there will be a periodic determination of his need for continued treatment in the institution; *and*

(C) provide for the development of alternate plans of care, making maximum utilization of available resources, for [recipients] *persons receiving services under the State plan who are 65 years of age or older and who would otherwise need care in such institutions* [, including appropriate medical treatment and other aid or assistance]; for services referred to in section 1603(a) [(4)] (1) (A) (i) and (ii) which are appropriate for such [recipients] *persons receiving services* and for such patients; and for methods of administration necessary to assure that the responsibilities of the State agency under the State plan with respect to such [recipients] *persons receiving services* and such patients will be effectively carried out; [and]

[(D) provide methods of determining the reasonable cost of institutional care for such patients; and]

[(17)] (12) if the State plan includes [aid or assistance to or in behalf of] *services to individuals 65 years of age or older who are patients in public institutions for mental diseases*, show that the State is making satisfactory progress toward developing and implementing a comprehensive mental health program, in-

cluding provision for utilization of community mental health centers, nursing homes, and other alternatives to care in public institutions for mental diseases; and

**[(18)]** *(19) provide that, to the extent services under the plan are furnished by the staff of the State or local agency administering the plan in any political subdivision of the State, such staff will be located in organizational units (up to such organizational levels as the Secretary may prescribe) which are separate and distinct from the units within such agencies responsible for determining eligibility for any form of cash assistance paid on a regularly recurring basis or for performing any functions directly related thereto, subject to any exceptions which, in accordance with standards prescribed in regulations, the Secretary may permit when he deems it necessary in order to ensure the effective administration of the plan.*

Notwithstanding paragraph (3), if on January 1, 1962, and on the date on which a State submits its plan for approval under this title, the State agency which administered or supervised the administration of the plan of such State approved under title X was different from the State agency which administered or supervised the administration of the plan of such State approved under title I and the State agency which administered or supervised the administration of the plan of such State approved under title XIV, the State agency which administered or supervised the administration of such plan approved under title X may be designated to administer or supervise the administration of the portion of the State plan for **[aid]** services to the aged, blind, or disabled **[(or for aid to the aged, blind, or disabled and medical assistance for the aged)]** which relates to blind individuals and a separate State agency may be established or designated to administer or supervise the administration of the rest of such plan; and in such case the part of the plan which each such agency administers, or the administration of which each such agency supervises, shall be regarded as a separate plan for purposes of this title.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a), except that he shall not approve any plan which imposes, as a condition of eligibility for **[aid or assistance]** services under the plan—

- (1) an age requirement of more than sixty-five years; or
- (2) any residence requirement which **[(A) in the case of applicants for aid to the aged, blind, or disabled excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for such aid and has resided therein continuously for one year immediately preceding the application, and (B) in the case of applicants for medical assistance for the aged,]** excludes any individual who resides in the State; or
- (3) any citizenship requirement which excludes any citizen of the United States.

**[In the case of any State to which the provisions of section 344 of the Social Security Act Amendments of 1950 were applicable on January 1, 1962, and to which the sentence of section 1002(b) following paragraph (2) thereof is applicable on the date on which its State plan for aid to the aged, blind or disabled (or for aid to the aged, blind, or**

disabled and medical assistance for the aged) was submitted for approval under this title, the Secretary shall approve the plan of such State for aid to the aged, blind, or disabled (or for aid to the aged, blind, or disabled and medical assistance for the aged) for purposes of this title, even though it does not meet the requirements of paragraph (14) of subsection (a) if it meets all other requirements of this title for an approved plan for aid to the aged, blind, or disabled (or for aid to the aged, blind, or disabled and medical assistance for the aged); but payments under section 1603 shall be made, in the case any such plan, only with respect to expenditures thereunder which would be included as expenditures for the purposes of section 1603 under a plan approved under this section without regard to the provisions of this sentence.]

[(c) Subject to the last sentence of subsection (a), nothing in this title shall be construed to permit a State to have in effect with respect to any period more than one State plan approved under this title.]

### Payments to States

**Section 1603.** (a) From the sums appropriated therefor, the Secretary shall pay to each State which has a plan approved under this title, for each quarter, [beginning with the quarter commencing October 1, 1962—] *an amount equal to 75% of the total amounts expended during such quarter (subject to Section 1125) as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the plan for the purpose of providing services to the aged, blind, or disabled. Except to the extent specified by the Secretary, such services shall include only—*

(1) *services provided by the staff of the State agency, or of the local agency administering the State plan in the political subdivision: Provided, That no funds authorized under this title shall be available for services defined as vocational rehabilitation services under the Vocational Rehabilitation Act (A) which are available to individuals in need of them under programs for their rehabilitation carried on under a State plan approved under such Act, or (B) which the State agency or agencies administering or supervising the administration of the State plan approved under such Act are able and willing to provide if reimbursed for the cost thereof pursuant to agreement under paragraph (2), if provided by such staff, and*

(2) *subject to limitations prescribed by the Secretary, services which in the judgment of the State agency cannot be as economically or as effectively provided by the staff of such State or local agency and are not otherwise reasonably available to individuals in need of them, and which are provided, pursuant to agreement with the State agency, by the State health authority or the State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act or by any other State agency which the Secretary may determine to be appropriate (whether provided by its staff or by contract with public (local) or nonprofit private agencies); except that services described in clause (B) of paragraph (1) may be provided only*



*pursuant to agreement with such State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services so approved.*

[(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to the sum of the following proportions of the total amounts expended during each month of such quarter to the aged, blind, or disabled under the State plan (including expenditures for premiums under Part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)—

[(A)  $\frac{31}{37}$  of such expenditures, not counting so much of any expenditure with respect to such month as exceeds the product of \$37 multiplied by the total number of recipients of such aid for such month (which total number, for purposes of this subsection, means (i) the number of individuals who received such aid in the form of money payments for such month, plus (ii) the number of other individuals with respect to whom expenditures were made in such month as aid to the aged, blind, or disabled in the form of medical or any other type of remedial care); plus

[(B) the larger of the following:

[(i) (I) the Federal percentage (as defined in section 1101(a)(8)) of the amount by which such expenditures exceed the amount which may be counted under clause (A), not counting so much of such excess with respect to such month as exceeds the product of \$38 multiplied by the total number of recipients of aid to the aged, blind, or disabled for such month, plus (II) 15 per centum of the total expended during such month as aid to the aged, blind, or disabled under the State plan in the form of medical or any other type of remedial care, not counting so much of such expenditure with respect to such month as exceeds the product of \$15 multiplied by the total number of recipients of aid to the aged, blind, or disabled for such month, or

[(ii) (I) the Federal medical percentage (as defined in section 6(c)) of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditures with respect to such month as exceeds (a) the product of \$52 multiplied by the total number of such recipients of aid to the aged, blind, or disabled for such month, or (b) if smaller, the total expended as aid to the aged, blind, or disabled in the form of medical or any other type of remedial care with respect to such month plus the product of \$37 multiplied by such total number of such recipients, plus (II) the Federal percentage of the amount by which the total expended during such month as aid to the aged, blind, or disabled under the State plan exceeds the amount which may be counted under clause (A) and the preceding provisions of this clause (B) (ii), not counting so much of such excess with respect to such month

as exceeds the product of \$38 multiplied by the total number of such recipients of aid to the aged, blind, or disabled for such month;

[(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to—

[(A) one-half of the total of the sums expended during such quarter as aid to the aged, blind, or disabled under the State plan (including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof), not counting so much of any expenditure with respect to any month as exceeds \$37.50 multiplied by the total number of recipients of aid to the aged, blind, or disabled for such month; plus

[(B) the larger of the following amounts: (i) one-half of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds (I) the product of \$45 multiplied by the total number of such recipients of aid to the aged, blind, or disabled for such month, or (II) if smaller, the total expended as aid to the aged, blind, or disabled in the form of medical or any other type of remedial care with respect to such month plus the product of \$37.50 multiplied by the total number of such recipients, or (ii) 15 per centum of the total of the sums expended during such quarter as aid to the aged, blind, or disabled under the State plan in the form of medical or any other type of remedial care, not counting so much of any expenditure with respect to any month as exceeds the product of \$7.50 multiplied by the total number of such recipients of aid to the aged, blind, or disabled for such month;

[(3) in the case of any State, an amount equal to the Federal medical percentage (as defined in section 61(c)) of the total amounts expended during such quarter as medical assistance for the aged under the State plan (including expenditures for insurance premiums for medical or any other type of remedial care or the cost thereof); and]

[(4) (1) in the case of any State whose State plan approved under section 1602 meets the requirements of subsection (c) (1), an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan—

[(A) 75 per centum of so much of such expenditures as are for—

[(i) services which are prescribed pursuant to subsection (c) (1) and are provided (in accordance with the next sentence) to [applicants for or recipients of aid or assistance] *individuals (including applicants for and recipients of assistance under Title XX under the plan to help them attain or retain capability for self-support or self-care, or*

[(ii) other services, specified by the Secretary as likely to prevent or reduce dependency, so provided to such [applicants or recipients,] *individuals* or

[(iii) any of the services prescribed pursuant to subsection (c) (1), and of the services specified as provided in clause (ii), which the Secretary may specify as appropriate for individuals who, within such period or periods as the Secretary may prescribe, have been or are likely to become applicants for or recipients of [aid or assistance under the plan] *assistance under Title XX* if such services are requested by such individuals and are provided to such individuals in accordance with the next sentence, or

[(iv) the training of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

[(B) one-half of so much of such expenditures (not included under subparagraph (A)) as are for services provided (in accordance with the next sentence) to [applicants for or recipients of aid or assistance] *individuals* under the plan, and to individuals requesting such services who (within such period or periods as the Secretary may prescribe) have been or are likely to become applicants for or recipients of [such aid or assistance] *assistance under Title XX*; plus

[(C) one-half of the remainder of such expenditures. The services referred to in subparagraphs (A) and (B) shall, except to the extent specified by the Secretary, include only—

[(D) services provided by the staff of the State agency, or of the local agency administering the State plan in the political subdivision: Provided, That no funds authorized under this title shall be available for services defined as vocational rehabilitation services under the Vocational Rehabilitation Act (i) which are available to individuals in need of them under programs for their rehabilitation carried on under a State plan approved under such Act, or (ii) which the State agency or agencies administering or supervising the administration of the State plan approved under such Act are able and willing to provide if reimbursed for the cost thereof pursuant to agreement under subparagraph (E), if provided by such staff, and

[(E) subject to limitations prescribed by the Secretary, services which in the judgment of the State agency cannot be as economically or as effectively provided by the staff of such State or local agency and are not otherwise reasonably available to individuals in need of them, and which are provided, pursuant to agreement with the State agency, by the State health authority or the State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act or by any other State agency which the Secretary may determine to be appropriate (whether provided by its staff or by contract with public (local) or nonprofit private agencies);

except that services described in clause (ii) of subparagraph (D) hereof may be provided only pursuant to agreement with such State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services so approved. The portion of the amount expended for administration of the State plan to which subparagraph (A) applies and the portion thereof to which subparagraphs (B) and (C) apply shall be determined in accordance with such methods and procedures as may be permitted by the Secretary; and

[(5)](2) in the case of any State whose State plan approved under section 1602 does not meet the requirements of subsection (c) (1), an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan, including services referred to in paragraph [(4)](1) and provided in accordance with the provisions of such paragraph.]

(b) (1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsection (a) for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

(2) The Secretary shall then pay, in such installments as he may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

[(3)] The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to aid or assistance furnished under the State plan, but excluding any amount of such aid or assistance recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased, shall be considered an overpayment to be adjusted under this subsection.]

[(4)] (3) Upon the making of any estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

(c) (1) In order for a State to qualify for payments under paragraph [(4)] (1) of subsection (a), its State plan approved under section 1602 must provide that the State agency shall make available to [applicants for or recipients of aid to the aged, blind, or disabled] *individuals* under such State plan at least those services to help them attain or retain capability for self-support or self-care which are prescribed by the Secretary.

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(2) In the case of any State whose State plan included a provision meeting the requirements of paragraph (1), but with respect to which the Secretary finds, after reasonable notice and opportunity for hearing to the State agency, administering or supervising the administration of such plan, that—

(A) the provision has been so changed that it no longer complies with the requirements of paragraph (1), or

(B) in the administration of the plan there is a failure to comply substantially with such provision,

the Secretary shall notify such State agency that further payments will not be made to the State under paragraph [(4)](1) of subsection (a) until he is satisfied that there will no longer be any such failure to comply. Until the Secretary is so satisfied further payments with respect to the administration of such State plan shall not be made under paragraph [(4)](1) of subsection (a) but shall instead be made, subject to the other provisions of this title, under paragraph [(5)] (2) of such subsection.

(d) Notwithstanding the preceding provisions of this section, the amount determined under such provisions for any State for any quarter which is attributable to expenditures with respect to individuals 65 years of age or older who are patients in institutions for mental diseases shall be paid only to the extent that the State makes a showing satisfactory to the Secretary that total expenditures in the State from Federal, State, and local sources for mental health services (including payments to or in behalf of individuals with mental health problems) under State and local public health and public welfare programs for such quarter exceed the average of the total expenditures in the State from such sources for such services under such programs for each quarter of the fiscal year ending June 30, 1965. For purposes of this subsection, expenditures for such services for each quarter in the fiscal year ending June 30, 1965, in the case of any State shall be determined on the basis of the latest data, satisfactory to the Secretary, available to him at the time of the first determination by him under this subsection for such State; and expenditures for such services for any quarter beginning after December 31, 1965, in the case of any State shall be determined on the basis of the latest data, satisfactory to the Secretary, available to him at the time of the determination under this subsection for such State for such quarter; and determinations so made shall be conclusive for purposes of this subsection.

### Operation of State Plans

**Sec. 1604.** If the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this title, finds—

(1) that the plan [has been so changed that it] no longer complies with the provisions of section 1602; or

(2) that in the administration of the plan there is a failure to comply substantially with any such provision;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected

by such failure), until the Secretary is satisfied that there will no longer be any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

### Definition[s]

**Section 1605. [(a)]** For purposes of this title, the term "[aid] *services to the aged, blind, or disabled*" means [money payments to, or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of, needy individuals who are 65 years of age or older, are blind, or are 18 years of age or over and permanently and totally disabled, but such term does not include—

[(1) any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution); or

[(2) any such payments to or care in behalf of any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis or mental diseases.

[Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 1602 includes provision for—

[(A) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such aid through payments described in this sentence;

[(B) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to the aged, blind, or disabled to be paid (and in conjunction with other income and resources), meet all the need of the individuals with respect to whom such payments are made;

[(C) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible, his capacity for self-care and to manage funds;

[(D) periodic review by such State agency of the determination under clause (A) to ascertain whether conditions justify such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1111, if and when it appears that such action will best serve the interests of such needy individual; and

[(E) opportunity for a fair hearing before the State agency on the determination referred to in clause (A) for any individual with respect to whom it is made.

[(b) For purposes of this title, the term "medical assistance for the aged" means payment of part or all of the cost of the following care and services (if provided in or after the third month before the month in which the recipient makes application for assistance) for individuals who are sixty-five years of age or older and who are not recipients of aid to the aged, blind, or disabled except, for any month, for recipients of aid to the aged, blind, or disabled who are admitted to or discharged from a medical institution during such month) but whose income and resources are insufficient to meet all of such cost—

- [(1) inpatient hospital services;
- [(2) skilled nursing-home services;
- [(3) physicians' services;
- [(4) outpatient hospital or clinic services;
- [(5) home health care services;
- [(6) private duty nursing services;
- [(7) physical therapy and related services;
- [(8) dental services;
- [(9) laboratory and X-ray services;
- [(10) prescribed drugs, eyeglasses, dentures, and prosthetic devices;
- [(11) diagnostic, screening, and preventive services; and
- [(12) any other medical care or remedial care recognized under State law;

[except that such term does not include any such payments with respect to care or services for any individual who is an inmate of a public institution (except as a patient in a medical institution).] [services (including but not limited to the services referred to in Section 1603 a(1) (A) and (B)) provided for or on behalf of needy individuals who are 65 years of age or older or are blind, or are disabled.]

[For purposes of this title, the term "services to the aged, blind, or disabled" means] any of the following services provided for recipients of benefits under title XX or other needy individuals who are 65 years of age or older, blind, or disabled:

(1) protective services for individuals who are (or are in danger of) being abused, neglected, or exploited;

(2) homemaker services, including education in household and related financial management and matters of consumer protection, and services to assist aged, blind, or disabled individuals to remain in or return to their own homes or other residential situations and to avoid institutionalization or to assist in making appropriate living arrangements in the lowest cost in light of the care needed;

(3) nutrition services, including the provision, in appropriate cases, of adequate meals, and education in matters of nutrition and the preparation of foods;

(4) *services to assist individuals to deal with problems of locating suitable housing arrangements and other problems of inadequate housing, and to educate them in practices of home maintenance and management;*

(5) *emergency services made available in connection with a crisis or urgent need of an individual;*

(6) *services, including child care in appropriate cases, to assist individuals to engage in training or secure or retain employment;*

(7) *services to assist individuals to meet problems resulting from drug abuse or alcohol abuse; and*

(8) *information and referral services for individuals in need of services from other agencies (such as the health, education, or vocational rehabilitation agency, or private social agencies) and follow-up activities to assure that individuals referred to and eligible for available services from such other agencies received such services.*



**TITLE XVIII—HEALTH INSURANCE FOR THE AGED AND  
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**Prohibition Against Any Federal Interference**

**Sec. 1801.** Nothing in this title shall be construed to authorize any Federal officer or employee to exercise any supervision or control over the practice of medicine or the manner in which medical services are provided, or over the selection, tenure, or compensation of any officer

or employee of any institution, agency, or person providing health services; or to exercise any supervision or control over the administration or operation of any such institution, agency, or person.

### Free Choice by Patient Guaranteed

**Sec. 1802.** Any individual entitled to insurance benefits under this title may obtain health services from any institution, agency, or person qualified to participate under this title if such institution, agency, or person undertakes to provide him such services.

### Option to Individuals To Obtain Other Health Insurance Protection

**Sec. 1803.** Nothing contained in this title shall be construed to preclude any State from providing, or any individual from purchasing or otherwise securing, protection against the cost of any health services.

## Part A—Hospital Insurance Benefits for the Aged and Disabled

### Description of Program

**Sec. 1811.** The insurance program for which entitlement is established by section 226 provides basic protection against the costs of hospital and related post-hospital services in accordance with this part for (1) individuals who are age 65 or over and are entitled to retirement benefits under title II of this Act or under the railroad retirement system.

*and (2) individuals under age 65 who have been entitled for not less than 24 months to benefits under title II of this Act or under the railroad retirement system on the basis of a disability.*

### Scope of Benefits

**Sec. 1812.** (a) The benefits provided to an individual by the insurance program under this part shall consist of entitlement to have payment made on his behalf or, in the case of payments referred to in section 1814(d)(2) to him (subject to the provisions of this part) for—

(1) inpatient hospital services for [up to 150 days] *up to 210 days*<sup>1</sup> during any spell of illness minus one day for each day of inpatient hospital services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies in accordance with regulations of the Secretary that he does not desire to have such payment made);

(2) post-hospital extended care services for up to 100 days during any spell of illness; and

(3) post-hospital home health services for up to 100 visits (during the one-year period described in section 1861(n)) after the beginning of one spell of illness and before the beginning of the next.

<sup>1</sup> Effective with respect to inpatient hospital services furnished during inpatient hospital stays beginning after December 31, 1971.

(b) Payment under this part for services furnished an individual during a spell of illness may not (subject to subsection (c)) be made for—

(1) inpatient hospital services furnished to him during such spell after such services have been furnished to him **[for 150 days]** for 210 days<sup>1</sup> during such spell minus 1 day for each day of inpatient hospital services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies in accordance with regulations of the Secretary that he does not desire to have such payment made);

(2) post-hospital extended care services furnished to him during such spell after such services have been furnished to him for 100 days during such spell; or

(3) inpatient psychiatric hospital services furnished to him after such services have been furnished to him for a total of 190 days during his lifetime.

(c) If an individual is an inpatient of a psychiatric hospital on the first day of the first month for which he is entitled to benefits under this part, the days on which he was an inpatient of such a hospital in the 150-day period immediately before such first day shall be included in determining the number of days limit under subsection (b)(1) insofar as such limit applies to (1) inpatient psychiatric hospital services, or (2) inpatient hospital services for an individual who is an inpatient primarily for the diagnosis or treatment of mental illness (but shall not be included in determining such number of days limit insofar as it applies to other inpatient hospital services or in determining the 190-day limit under subsection (b)(3)).

(d) Payment under this part may be made for post-hospital home health services furnished an individual only during the one-year period described in section 1861(n) following his most recent hospital discharge which meets the requirements of such section, and only for the first 100 visits in such period. The number of visits to be charged for purposes of the limitation in the preceding sentence, in connection with items or services described in section 1861(m), shall be determined in accordance with regulations.

(e) For purposes of subsections (b), (c), and (d), inpatient hospital services, inpatient psychiatric hospital services, post-hospital extended care services, and post-hospital home health services shall be taken into account only if payment is or would be, except for this section or the failure to comply with the request and certification requirements of or under section 1814(a), made with respect to such services under this part.

(f) For definition of "spell of illness", and for definitions of other terms used in this part, see section 1861.

### Deductibles and Coinsurance

**Sec. 1813.** (a)(1) The amount payable for inpatient hospital services furnished an individual during any spell of illness shall be reduced by a deduction equal to the inpatient hospital deductible or, if less, the charges imposed with respect to such individual for such services, except that, if the customary charges for such services are greater

<sup>1</sup> Effective with respect to inpatient hospital services furnished during inpatient hospital stays beginning after Dec. 31, 1971.

than the charges so imposed, such customary charges shall be considered to be the charges so imposed. Such amount shall be further reduced by a coinsurance amount equal to—

(A) *one-eighth of the inpatient hospital deductible for each day (before the 61st day) on which such individual is furnished such services during such spell of illness after such services have been furnished to him for 30 days during such spell;*<sup>1</sup>

(B) **[A]** *one-fourth of the inpatient hospital deductible for each day (before the 91st day) on which such individual is furnished such services during such spell of illness after such services have been furnished to him for 60 days during such spell; and*

(C) **[B]** *one-half of the inpatient hospital deductible for each day (before the day following the last day for which such individual is entitled under section 1812(a)(1) to have payment made on his behalf for inpatient hospital services during such spell of illness) on which such individual is furnished such services during such spell of illness after such services have been furnished to him for 90 days during such spell;*

except that the reduction under this sentence for any day shall not exceed the charges imposed for that day with respect to such individual for such services (and for this purpose, if the customary charges for such services are greater than the charges so imposed, such customary charges shall be considered to be the charges so imposed).

(2) The amount payable to any provider of services under this part for services furnished an individual during any spell of illness shall be further reduced by a deduction equal to the cost of the first three pints of whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished to him as part of such services during such spell of illness.

(3) The amount payable for post-hospital extended care services furnished an individual during any spell of illness shall be reduced by a coinsurance amount equal to one-eighth of the inpatient hospital deductible for each day (before the 101st day) on which he is furnished such services after such services have been furnished to him for 20 days during such spell.

(b)(1) The inpatient hospital deductible which shall be applicable for the purposes of subsection (a) shall be \$40 in the case of any spell of illness beginning before 1969.

(2) The Secretary shall, between July 1 and October 1 of 1968, and of each year thereafter, determine and promulgate the inpatient hospital deductible which shall be applicable for the purposes of subsection (a) in the case of any spell of illness beginning during the succeeding calendar year. Such inpatient hospital deductible shall be equal to \$40 multiplied by the ratio of (A) the current average per diem rate for inpatient hospital services for the calendar year preceding the promulgation, to (B) the current average per diem rate for such services for 1966. Any amount determined under the preceding sentence which is not a multiple of \$4 shall be rounded to the nearest multiple of \$4 (or, if it is midway between two multiples of \$4, to the next higher multiple of \$4). The current average per diem rate for any year shall be determined by the Secretary on the basis of the

<sup>1</sup> Effective with respect to inpatient hospital services furnished during inpatient hospital stays beginning after Dec. 31, 1971.

best information available to him (at the time the determination is made) as to the amounts paid under this part on account of inpatient hospital services furnished during such year, by hospitals which have agreements in effect under section 1866, to individuals who are entitled to hospital insurance benefits under section 226, plus the amount which would have been so paid but for subsection (a)(1) of this section.

### Conditions of and Limitations on Payment for Services

#### Requirement of Requests and Certifications

**Sec. 1814.** (a) [Except as provided in subsection (d)] *Except as provided in [subsection (d)]<sup>1</sup> subsections (d) and (g) and in section 1876,<sup>2</sup> payment for services furnished an individual may be made only to providers of services which are eligible therefor under section 1866 and only if—*

(1) written request, signed by such individual except in cases in which the Secretary finds it impracticable for the individual to do so, is filed for such payment in such form, in such manner, within such time, and by such person or persons as the Secretary may by regulation prescribe;

(2) a physician certifies (and recertifies, where such services are furnished over a period of time, in such cases, with such frequency, and accompanied by such supporting material, appropriate to the case involved, as may be provided by regulations, except that the first of such recertifications shall be required in each case of inpatient hospital services not later than the 20th day of such period) that—

(A) in the case of inpatient psychiatric hospital services, such services are or were required to be given on an inpatient basis, by or under the supervision of a physician, for the psychiatric treatment of an individual; and (i) such treatment can or could reasonably be expected to improve the condition for which such treatment is or was necessary or (ii) inpatient diagnostic study is or was medically required and such services are or were necessary for such purposes;

(B) in the case of inpatient tuberculosis hospital services, such services are or were required to be given on an inpatient basis, by or under the supervision of a physician, for the treatment of an individual for tuberculosis; and such treatment can or could reasonably be expected to (i) improve the condition for which such treatment is or was necessary or (ii) render the condition non-communicable;

(C) in the case of post-hospital extended care services, such services are or were required to be given on an inpatient basis because the individual needs or needed skilled nursing care on a continuing basis for any of the conditions with respect to which he was receiving inpatient hospital services (or services which would constitute inpatient hospital services if the institution met the requirements of paragraphs (6) [and (8)] and (9)<sup>3</sup> of section 1861(e)) prior to transfer to the extended care facility or for a condition requiring such extended care services which arose after such transfer and while he was still

<sup>1</sup> Effective with respect to services provided on or after January 1, 1972.

<sup>2</sup> Applies to accounting periods beginning after June 30, 1971.

<sup>3</sup> Applies to any provider of services for fiscal years (of such provider) beginning after the fifth month following the month of enactment.

in the facility for treatment of the condition or conditions for which he was receiving such inpatient hospital services; **[or]**

(D) in the case of post-hospital home health services, such services are or were required because the individual is or was confined to his home (except when receiving items and services referred to in section 1861(m)(7)) and needed skilled nursing care on an intermittent basis, or physical or speech therapy, for any of the conditions with respect to which he was receiving inpatient hospital services (or services which would constitute inpatient hospital services if the institution met the requirements of paragraphs (6) **[and (8)]** and (9)<sup>1</sup> of 1861(e)) or post-hospital extended care services; a plan for furnishing such services to such individual has been established and is periodically reviewed by a physician; and such services are or were furnished while the individual was under the care of a physician; or

(E) *in the case of inpatient hospital services in connection with a dental procedure, the individual suffers from impairments of such severity as to require hospitalization;*<sup>2</sup>

(3) with respect to inpatient hospital services (other than inpatient psychiatric hospital services and inpatient tuberculosis hospital services) which are furnished over a period of time, a physician certifies that such services are required to be given on an inpatient basis for such individual's medical treatment, or that inpatient diagnostic study is medically required and such services are necessary for such purpose, except that (A) such certification shall be furnished only in such cases, with such frequency, and accompanied by such supporting material, appropriate to the cases involved, as may be provided by regulations, and (B) the first such certification required in accordance with clause (A) shall be furnished no later than the 20th day of such period;

(4) in the case of inpatient psychiatric hospital services, the services are those which the records of the hospital indicate were furnished to the individual during periods when he was receiving (A) intensive treatment services, (B) admission and related services necessary for a diagnostic study, or (C) equivalent services;

(5) in the case of inpatient tuberculosis hospital services, the services are those which the records of the hospital indicate were furnished to the individual during periods when he was receiving treatment which could reasonably be expected to (A) improve his condition or (B) render it noncommunicable;

(6) with respect to inpatient hospital services furnished such individual after the 20th day of a continuous period of such services and with respect to post-hospital extended care services furnished after such day of a continuous period of such services as may be prescribed in or pursuant to regulations, there was not in effect, at the time of admission of such individual to the hospital or extended care facility, as the case may be, a decision under section 1866(d) (based on a finding that utilization review of long-stay cases is not being made in such hospital or facility); and

<sup>1</sup> Applies to any provider of services for fiscal years (of such provider) beginning after the fifth month following the month of enactment.

<sup>2</sup> Applies to admissions occurring after the second month following the month of enactment.

(7) with respect to inpatient hospital services or post-hospital extended care services furnished such individual during a continuous period, a finding has not been made (by the physician members of the committee or group, [as described in section 1861 (k)(4)] *as described in section 1861(k)(4), including any finding made in the course of a sample or other review of admissions to the institution*)<sup>1</sup> pursuant to the system of utilization to review that further inpatient hospital services or further post-hospital extended care services, as the case may be, are not medically necessary; except that, if such a finding has been made, payment may be made for such services furnished before the 4th day after the day on which the hospital or extended care facility, as the case may be, received notice of such finding.

To the extent provided by regulations, the certification and recertification requirements of paragraph (2) shall be deemed satisfied where, at a later date, a physician makes certification of the kind provided in subparagraph (A), (B), (C) or (D) of paragraph (2) (whichever would have applied), but only where such certification is accompanied by such medical and other evidence as may be required by such regulations.

**[Reasonable Cost of Services] Amount Paid to Providers<sup>2</sup>**

(b) The amount paid to any provider of services with respect to services for which payment may be made under this part shall, subject to the provisions of section 1813, [be the reasonable cost of such services, as determined under section 1861(v)]

(1) *the lesser of (A) the reasonable cost of such services, as determined under section 1861(v), or (B) the customary charges with respect to such services; or*

(2) *if such services are furnished by a public provider of services free of charge or at nominal charges to the public, the amount determined on the basis of those items (specified in regulations prescribed by the Secretary) included in the determination of such reasonable cost which the Secretary finds will provide fair compensation to such provider for such services.*

**No Payments to Federal Providers of Services**

(c) No payment may be made under this part (except under subsection (d)) to any Federal provider of services, except a provider of services which the Secretary determines is providing services to the public generally as a community institution or agency; and no such payment may be made to any provider of services for any item or service which such provider is obligated by a law of, or a contract with, the United States to render at public expense.

**Payments for Emergency Hospital Services**

(d) (1) Payments shall also be made to any hospital for inpatient hospital services furnished in a calendar year by the hospital or under arrangements (as defined in section 1861(w)) with it, to an individual entitled to hospital insurance benefits under section 226 even

<sup>1</sup> Applies to services furnished after the second month following the month of enactment

<sup>2</sup> Applies to services furnished by hospitals, extended care facilities, and home health agencies in accounting periods beginning after June 30, 1971.



though such hospital does not have an agreement in effect under this title if (A) such services were emergency services, (B) the Secretary would be required to make such payment if the hospital had such an agreement in effect and otherwise met the conditions of payment hereunder, and (C) such hospital has elected to claim payments for all such inpatient emergency services and for the emergency outpatient services referred to in section 1835(b) furnished during such year. Such payments shall be made only in the amounts provided under subsection (b) and then only if such hospital agrees to comply, with respect to the emergency services provided, with the provisions of section 1866(a).

(2) Payment may be made on the basis of an itemized bill to an individual entitled to hospital insurance benefits under section 226 for services described in paragraph (1) which are emergency services if (A) payment cannot be made under paragraph (1) solely because the hospital does not elect to claim such payment, and (B) such individual files application (submitted within such time and in such form and manner and by such person, and containing and supported by such information as the Secretary shall by regulations prescribe) for reimbursement.

(3) The amounts payable under the preceding paragraph with respect to services described therein shall, subject to the provisions of section 1813, be equal to 60 percent of the hospital's reasonable charges for routine services furnished in the accommodations occupied by the individual or in semiprivate accommodations (as defined in section 1861(v)(4)), whichever is less, plus 80 percent of the hospital's reasonable charges for ancillary services. If separate charges for routine and ancillary services are not made by the hospital, reimbursement may be based on two-thirds of the hospital's reasonable charges for the services received but not to exceed the charges which would have been made if the patient had occupied semiprivate accommodations. For purposes of the preceding provisions of this paragraph, the term "routine services" shall mean the regular room, dietary, and nursing services, minor medical and surgical supplies and the use of equipment and facilities for which a separate charge is not customarily made; the term "ancillary services" shall mean those special services for which charges are customarily made in addition to routine services.

#### **Payment for Inpatient Hospital Services Prior to Notification of Noneligibility**

(e) Notwithstanding that an individual is not entitled to have payment made under this part for inpatient hospital services furnished by any hospital payment shall be made to such hospital (unless it elects not to receive such payment or, if payment has already been made by or on behalf of such individual, fails to refund such payment within the time specified by the Secretary) for such services which are furnished to the individual prior to notification to such hospital from the Secretary of his lack of entitlement, if such payments are precluded only by reason of section 1812 and if such hospital complies with the requirements of and regulations under this title with respect to such payments, has acted in good faith and without knowledge of such lack of entitlement, and has acted reasonably in assuming entitlement existed. Payment under the preceding sentence may not be

made for the services furnished an individual pursuant to any admission after the 6th elapsed day (not including as an elapsed day Saturday, Sunday, or legal holiday) after the day on which such admission occurred.

**[Payment for Certain Emergency Hospital Services Furnished Outside the United States] Payment for Certain Inpatient Hospital Services Furnished Outside the United States<sup>1</sup>**

[(f) The authority contained in subsection (d) shall be applicable to emergency inpatient hospital services furnished an individual by a hospital located outside the United States if—

[(1) such individual was physically present in a place within the United States at the time the emergency which necessitated such inpatient hospital services occurred; and

[(2) such hospital was closer to, or substantially more accessible from, such place than the nearest hospital within the United States which was adequately equipped to deal with, and was available for the treatment of, such individual's illness or injury.]

(f)(1) *Payment shall be made for inpatient hospital services furnished to an individual entitled to hospital insurance benefits under section 226 by a hospital located outside the United States, or under arrangements (as defined in section 1861(w)) with it, if—*

(A) *such individual is a resident of the United States, and*

(B) *such hospital was closer to, or substantially more accessible from, the residence of such individual than the nearest hospital within the United States which was adequately equipped to deal with, and was available for the treatment of, such individual's illness or injury.*

(2) *Payment may also be made for emergency inpatient hospital services furnished to an individual entitled to hospital insurance benefits under section 226 by a hospital located outside the United States if—*

(A) *such individual was physically present in a place within the United States at the time the emergency which necessitated such inpatient hospital services occurred, and*

(B) *such hospital was closer to, or substantially more accessible from, such place than the nearest hospital within the United States which was adequately equipped to deal with, and was available for the treatment of, such individual's illness or injury.*

(3) *Payment shall be made in the amount provided under subsection (b) to any hospital for the inpatient hospital services described in paragraph (1) or (2) furnished to an individual by the hospital or under arrangements (as defined in section 1861(w)) with it if (A) the Secretary would be required to make such payment if the hospital had an agreement in effect under this title and otherwise met the conditions of payment hereunder, (B) such hospital elects to claim such payment, and (C) such hospital agrees to comply, with respect to such services, with the provisions of section 1866(a).*

(4) *Payment for the inpatient hospital services described in paragraph (1) or (2) furnished to an individual entitled to hospital insurance benefits under section 226 may be made on the basis of an itemized bill to such individual if (A) payment for such services cannot be made under paragraph (3) solely because the hospital does not elect to claim such payment,*

<sup>1</sup> Applies to services furnished with respect to admissions occurring after Dec. 31, 1971.

and (B) such individual files application (submitted within such time and in such form and manner and by such person, and containing and supported by such information as the Secretary shall by regulations prescribe) for reimbursement. The amount payable with respect to such services shall, subject to the provisions of section 1813, be equal to the amount which would be payable under subsection (d)(3).

**Payment for Services of a Physician Rendered in a Teaching Hospital<sup>1</sup>**

(g) For purposes of services for which the reasonable cost thereof is determined under section 1861(v)(1)(D), payment under this part shall be made to such fund as may be designated by the organized medical staff of the hospital in which such services were furnished or, if such services were furnished in such hospital by the faculty of a medical school, to such fund as may be designated by such faculty, but only if—

(1) such hospital has an agreement with the Secretary under section 1866, and

(2) the Secretary has received written assurances that (A) such payment will be used by such fund solely for the improvement of care of hospital patients or for educational or charitable purposes and (B) the individuals who were furnished such services or any other persons will not be charged for such services (or if charged, provision will be made for return of any moneys incorrectly collected).

**Payment for Posthospital Extended Care Services<sup>2</sup>**

(h)(1) An individual shall be presumed to require the care specified in subsection (a)(2)(C) of this section for purposes of making payment to an extended care facility (subject to the provisions of section 1812) for posthospital extended care services which are furnished by such facility to such individual if—

(A) the certification referred to in subsection (a)(2)(C) of this section is submitted prior to or at the time of admission of such individual to such extended care facility,

(B) such certification states that the medical condition of the individual is a condition designated in regulations,

(C) such certification is accompanied by a plan of treatment for providing such services, and

(D) there is compliance with such other requirements and procedures as may be specified in regulations,

but only for services furnished during such limited periods of time with respect to such conditions of the individual as may be prescribed in regulations by the Secretary, taking into account the medical severity of such conditions, the degree of incapacity, and the minimum length of stay in an institution generally needed for such conditions, and such other factors affecting the type of care to be provided as the Secretary deems pertinent.

(2) If the Secretary determines with respect to a physician that such physician is submitting with some frequency (A) erroneous certifications that individuals have conditions designated in regulations as provided in this subsection or (B) plans for providing services which are inappro-

<sup>1</sup> Applies to accounting periods beginning after June 30, 1971.

<sup>2</sup> Applies to admissions to extended care facilities initiated on or after Jan. 1, 1972.

appropriate, the provisions of paragraph (1) shall not apply, after the effective date of such determination, in any case in which such physician submits a certification or plan referred to in subparagraph (A), (B), or (C) of paragraph (1).

#### **Payment for Posthospital Home Health Services<sup>1</sup>**

(i)(1) *An individual shall be presumed to require the services specified in subsection (a)(2)(D) of this section for purposes of making payment to a home health agency (subject to the provisions of section 1812) for post-hospital home health services furnished by such agency to such individual if—*

(A) *the certification and plan referred to in subsection (a)(2)(D) of this section are submitted in timely fashion prior to the first visit by such agency,*

(B) *such certification states that the medical condition of the individual is a condition designated in regulations, and*

(C) *there is compliance with such other requirements and procedures as may be specified in regulations,*

*but only for services furnished during such limited numbers of visits with respect to such conditions of the individual as may be prescribed in regulations by the Secretary, taking into account the medical severity of such conditions, the degree of incapacity, and the minimum period of home confinement generally needed for such conditions, and such other factors affecting the type of care to be provided as the Secretary deems pertinent.*

(2) *If the Secretary determines with respect to a physician that such physician is submitting with some frequency (A) erroneous certifications that individuals have conditions designated in regulations as provided in this subsection or (B) plans for providing services which are inappropriate, the provisions of paragraph (1) shall not apply, after the effective date of such determination, in any case in which such physician submits a certification or plan referred to in subparagraph (A) or (B) of paragraph (1).*

#### **Payment to Providers of Services**

**Sec. 1815.** The Secretary shall periodically determine the amount which should be paid under this part to each provider of services with respect to the services furnished by it, and the provider of services shall be paid, at such time or times as the Secretary believes appropriate (but not less often than monthly) and prior to audit or settlement by the General Accounting Office, from the Federal Hospital Insurance Trust Fund, the amounts so determined, with necessary adjustments on account of previously made overpayments or underpayments; except that no such payments shall be made to any provider unless it has furnished such information as the Secretary may request in order to determine the amounts due such provider under this part for the period with respect to which the amounts are being paid or any prior period.

<sup>1</sup> Applies to home health plans initiated on or after Jan. 1, 1972.

### Use of Public Agencies or Private Organizations To Facilitate Payment to Providers of Services

**Sec. 1816.** (a) If any group or association of providers of services wishes to have payments under this part to such providers made through a national, State, or other public or private agency or organization and nominates such agency or organization for this purpose, the Secretary is authorized to enter into an agreement with such agency or organization providing for the determination by such agency or organization (*subject to the provisions of section 1878 and to*<sup>1</sup> such review by the Secretary as may be provided for by the agreement) of the amount of the payments required pursuant to this part to be made to such providers, and for the making of such payments by such agency or organization to such providers. Such agreement may also include provision for the agency or organization to do all or any part of the following: (1) to provide consultative services to institutions or agencies to enable them to establish and maintain fiscal records necessary for purposes of this part and otherwise to qualify as hospitals, extended care facilities, or home health agencies, and (2) with respect to the providers of services which are to receive payments through it (A) to serve as a center for, and communicate to providers, any information or instructions furnished to it by the Secretary, and serve as a channel of communication from providers to the Secretary; (B) to make such audits of the records of providers as may be necessary to insure that proper payments are made under this part; and (C) to perform such other functions as are necessary to carry out this subsection.

(b) The Secretary shall not enter into an agreement with any agency or organization under this section unless (1) he finds (A) that to do so is consistent with the effective and efficient administration of this part, and (B) that such agency or organization is willing and able to assist the providers to which payments are made through it under this part in the application of safeguards against unnecessary utilization of services furnished by them to individuals entitled to hospital insurance benefits under section 226, and the agreement provides for such assistance, and (2) such agency or organization agrees to furnish to the Secretary such of the information acquired by it in carrying out its agreement under this section as the Secretary may find necessary in performing his functions under this part.

(c) An agreement with any agency or organization under this section may contain such terms and conditions as the Secretary finds necessary or appropriate, may provide for advances of funds to the agency or organization for the making of payments by it under subsection (a), and shall provide for payment of so much of the cost of administration of the agency or organization as is determined by the Secretary to be necessary and proper for carrying out the functions covered by the agreement.

(d) If the nomination of an agency or organization as provided in this section is made by a group or association of providers of services, it shall not be binding on members of the group or association which notify the Secretary of their election to that effect. Any provider may,

<sup>1</sup> Applies to cost reports of providers of services, as defined in title XVIII of the Act, for accounting periods beginning after June 30, 1971.

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upon such notice as may be specified in the agreement under this section with an agency or organization, withdraw its nomination to receive payments through such agency or organization. Any provider which has withdrawn its nomination, and any provider which has not made a nomination, may elect to receive payments from any agency or organization which has entered into an agreement with the Secretary under this section if the Secretary and such agency or organization agree to it.

(e) An agreement with the Secretary under this section may be terminated—

(1) by the agency or organization which entered into such agreement at such time and upon such notice to the Secretary, to the public, and to the providers as may be provided in regulations, or

(2) by the Secretary at such time and upon such notice to the agency or organization, to the providers which have nominated it for purposes of this section, and to the public, as may be provided in regulations, but only if he finds, after reasonable notice and opportunity for hearing to the agency or organization, that (A) the agency or organization has failed substantially to carry out the agreement, or (B) the continuation of some or all of the functions provided for in the agreement with the agency or organization is disadvantageous or is inconsistent with the efficient administration of this part.

(f) An agreement with an agency or organization under this section may require any of its officers or employees certifying payments or disbursing funds pursuant to the agreement, or otherwise participating in carrying out the agreement, to give surety bond to the United States in such amount as the Secretary may deem appropriate.

(g)(1) No individual designated pursuant to an agreement under this section as a certifying officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payments certified by him under this section.

(2) No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this section if it was based upon a voucher signed by a certifying officer designated as provided in paragraph (1) of this subsection.

(3) No such agency or organization shall be liable to the United States for any payments referred to in paragraph (1) or (2).

### Federal Hospital Insurance Trust Fund

**Sec. 1817.** (a) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Hospital Insurance Trust Fund" (hereinafter in this section referred to as the "Trust Fund"). The Trust Fund shall consist of *such gifts and bequests as may be made as provided in section 201(i)(1), and*<sup>1</sup> such amounts as may be deposited in, or appropriated to, such fund as provided in this part. There are hereby appropriated to the Trust Fund for the fiscal year ending June 30, 1966, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

<sup>1</sup> Applies to gifts and bequests received after the date of enactment.

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(1) the taxes imposed by section 3101(b) and 3111(b) of the Internal Revenue Code of 1954 with respect to wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of such Code after December 31, 1965, as determined by the Secretary of the Treasury by applying the applicable rates of tax under such sections to such wages, which wages shall be certified by the Secretary of Health, Education, and Welfare on the basis of records of wages established and maintained by the Secretary of Health, Education, and Welfare in accordance with such reports; and

(2) the taxes imposed by section 1401(b) of the Internal Revenue Code of 1954 with respect to self-employment income reported to the Secretary of the Treasury or his delegate on tax returns under subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such section to such self-employment income, which self-employment income shall be certified by the Secretary of Health, Education, and Welfare on the basis of records of self-employment established and maintained by the Secretary of Health, Education, and Welfare in accordance with such returns.

The amounts appropriated by the preceding sentence shall be transferred from time to time from the general fund in the Treasury to the Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in the preceding sentence, paid to or deposited into the Treasury; and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the taxes specified in such sentence.

(b) With respect to the Trust Fund, there is hereby created a body to be known as the Board of Trustees of the Trust Fund (hereinafter in this section referred to as the "Board of Trustees") composed of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare, all ex officio. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this section referred to as the "Managing Trustee"). The Commissioner of Social Security shall serve as the Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

(1) Hold the Trust Fund;

(2) Report to the Congress not later than the first day of April of each year on the operation and status of the Trust Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next 2 fiscal years;

(3) Report immediately to the Congress whenever the Board is of the opinion that the amount of the Trust Fund is unduly small; and

(4) Review the general policies followed in managing the Trust Fund, and recommend changes in such policies, including necessary changes in the provisions of law which govern the way in which the Trust Fund is to be managed.

The report provided for in paragraph (2) shall include a statement of the assets of, and the disbursements made from, the Trust Fund

during the preceding fiscal year, an estimate of the expected income to, and disbursements to be made from, the Trust Fund during the current fiscal year and each of the next 2 fiscal years, and a statement of the actuarial status of the Trust Fund. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(c) It shall be the duty of the Managing Trustee to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Fund. Such obligations issued for purchase by the Trust Fund shall have maturities fixed with due regard for the needs of the Trust Fund and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

(d) Any obligations acquired by the Trust Fund (except public-debt obligations issued exclusively to the Trust Fund) may be sold by the Managing Trustee at the market price, and such public-debt obligations may be redeemed at par plus accrued interest.

(e) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(f)(1) The Managing Trustee is directed to pay from time to time from the Trust Fund into the Treasury the amount estimated by him as taxes imposed under section 3101(b) which are subject to refund under section 6413(c) of the Internal Revenue Code of 1954 with respect to wages paid after December 31, 1965. Such taxes shall be determined on the basis of the records of wages established and maintained by the Secretary of Health, Education, and Welfare in accordance with the wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1954, and the Secretary of Health, Education, and Welfare shall furnish the Managing Trustee such information as may be required by the Managing Trustee for such purpose. The payments by the Managing Trustee shall be covered into the Treasury as repayments to the account for refunding internal revenue collections.



(2) Repayments made under paragraph (1) shall not be available for expenditures but shall be carried to the surplus fund of the Treasury. If it subsequently appears that the estimates under such paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Managing Trustee in future payments.

(g) There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Federal Old-Age and Survivors Insurance Trust Fund and from the Federal Disability Insurance Trust Fund amounts equivalent to the amounts not previously so transferred which the Secretary of Health, Education, and Welfare shall have certified as overpayments (other than amounts so certified to the Railroad Retirement Board) pursuant to section 1870(b) of this Act. There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Railroad Retirement Account amounts equivalent to the amounts not previously so transferred which the Secretary of Health, Education, and Welfare shall have certified as overpayments to the Railroad Retirement Board pursuant to section 1870(b) of this Act.

(h) The Managing Trustee shall also pay from time to time from the Trust Fund such amounts as the Secretary of Health, Education, and Welfare certifies are necessary to make the payments provided for by this part, and the payments with respect to administrative expenses in accordance with section 201(g)(1).

### ***Hospital Insurance Benefits for Uninsured Individuals Not Otherwise Eligible***

***Sec. 1818. (a) Every individual who—***

*(1) has attained the age of 65,*

*(2) is a resident of the United States, and is either (A) a citizen or (B) an alien lawfully admitted for permanent residence who has resided in the United States continuously during the 5 years immediately preceding the month in which he applies for enrollment under this section, and*

*(3) is not otherwise entitled to benefits under this part,*  
shall be eligible to enroll in the insurance program established by this part.

*(b) An individual may enroll under this section only in such manner and form as may be prescribed in regulations, and only during an enrollment period prescribed in or under this section.*

*(c) The provisions of section 1837, section 1838, subsection (c) of section 1839, and subsections (f) and (h) of section 1840 shall apply to persons authorized to enroll under this section except that—*

*(1) individuals who meet the conditions of subsection (a) on or before the last day of the seventh month after the month in which this section is enacted may enroll during an initial general enrollment period which shall begin on the first day of the second month which begins after the date on which this section is enacted and shall end on the last day of the tenth month after the month in which this Act is enacted;*

*(2) in the case of an individual who first meets the conditions of eligibility under this section on or after the first day of the eighth month after the month in which this section is enacted, the initial*

enrollment period shall begin on the first day of the third month before the month in which he first becomes eligible and shall end 7 months later;

(3) in the case of an individual who enrolls pursuant to paragraph (1) of this subsection, entitlement to benefits shall begin on—

(A) the first day of the second month after the month in which he enrolls,

(B) January 1, 1972, or

(C) the first day of the first month in which he meets the requirements of subsection (a),  
whichever is the latest;

(4) termination of coverage under this section by the filing of notice that the individual no longer wishes to participate in the hospital insurance program shall take effect at the close of the month following the month in which such notice is filed; and

(5) an individual's entitlement under this section shall terminate with the month before the first month in which he becomes eligible for hospital insurance benefits under section 226 of this Act or section 103 of the Social Security Amendments of 1965; and upon such termination, such individual shall be deemed, solely for purposes of hospital insurance entitlement, to have filed in such first month the application required to establish such entitlement.

(d)(1) The monthly premium of each individual for each month in his coverage period before July 1972 shall be \$31.

(2) The Secretary shall, during December of 1971 and of each year thereafter, determine and promulgate the dollar amount (whether or not such dollar amount was applicable for premiums for any prior month) which shall be applicable for premiums for months occurring in the 12-month period commencing July 1 of the next year. Such amount shall be equal to \$31, multiplied by the ratio of (A) the inpatient hospital deductible for such next year, as promulgated under section 1813(b)(2), to (B) such deductible promulgated for 1971. Any amount determined under the preceding sentence which is not a multiple of \$1 shall be rounded to the nearest multiple of \$1.

(e) Payment of the monthly premiums on behalf of any individual who meets the conditions of subsection (a) may be made by any public or private agency or organization under a contract or other arrangement entered into between it and the Secretary if the Secretary determines that payment of such premiums under such contract or arrangement is administratively feasible.

(f) Amounts paid to the Secretary for coverage under this section shall be deposited in the Treasury to the credit of the Federal Hospital Insurance Trust Fund.

## **Part B—Supplementary Medical Insurance Benefits for the Aged and Disabled**

### **Establishment of Supplementary Medical Insurance Program for the Aged and the Disabled**

**Sec. 1831.** There is hereby established a voluntary insurance program to provide medical insurance benefits in accordance with the provisions of this part for [individuals 65 years of age or over] aged

and disabled individuals who elect to enroll under such program, to be financed from premium payments by enrollees together with contributions from funds appropriated by the Federal Government.

### Scope of Benefits

**Sec. 1832.** (a) The benefits provided to an individual by the insurance program established by this part shall consist of—

(1) entitlement to have payment made to him or on his behalf (subject to the provisions of this part) for medical and other health services, except those described in paragraph (2)(B); and

(2) entitlement to have payment made on his behalf (subject to the provisions of this part) for—

(A) home health services for up to 100 visits during a calendar year;

(B) medical and other health services [(other than physicians' services unless furnished by a resident or intern of a hospital and the services for which payment may be made pursuant to section 1835(b)(2))] furnished by a provider of services or by others under arrangements with them made by a provider of services; [and]<sup>1</sup>, excluding—

(i) physician services except where furnished by—

(I) a resident or intern of a hospital, or

(II) a physician to a patient in a hospital which has a teaching program approved as specified in paragraph (6) of section 1861(b) (including services in conjunction with the teaching programs of such hospital whether or not such patient is an inpatient of such hospital), unless either clause (A) or (B) of paragraph (7) of such section is met, and

(ii) services for which payment may be made pursuant to section 1835(b)(2); and

(C) outpatient physical therapy [services:] services, other than services to which the next to last sentence of section 1861(p) applies.<sup>2</sup>

(b) For definitions of "spell of illness", "medical and other health services", and other terms used in this part, see section 1861.

### Payment of Benefits

**Sec. 1833.** (a) [Subject to] *Except as provided in section 1876, and subject to*<sup>3</sup> the succeeding provisions of this section, there shall be paid from the Federal Supplementary Medical Insurance Trust Fund, in the case of each individual who is covered under the insurance program established by this part and incurs expenses for services with respect to which benefits are payable under this part, amounts equal to—

(1) in the case of services described in section 1832(a)(1)—  
80 percent of the reasonable charges for the services; except that (A) an organization which provides medical and other health services (or arranges for their availability) on a prepayment basis may elect to be paid 80 percent of the reasonable cost of

<sup>1</sup> Applies to accounting periods beginning after June 30, 1971.

<sup>2</sup> Applies to services furnished on or after Jan. 1, 1972.

<sup>3</sup> Effective with respect to services provided on or after Jan. 1, 1972.

services for which payment may be made under this part on behalf of individuals enrolled in such organization in lieu of 80 percent of the reasonable charges for such services if the organization undertakes to charge such individuals no more than 20 percent of such reasonable cost plus any amounts payable by them as a result of subsection (b), [and] (B) with respect to expenses incurred for radiological or pathological services for which payment may be made under this part, furnished to an inpatient of a hospital by a physician in the field of radiology or pathology, the amounts paid shall be equal to 100 percent of the reasonable charges for such services, and (C) with respect to expenses incurred for those physicians' services for which payment may be made under this part that are described in section 1862(a)(4), the amounts paid shall be subject to such limitations as may be prescribed by regulations;<sup>1</sup> and

(2) in the case of services described in section 1832(a)(2)—80 percent of [of the reasonable cost of the services (as determined under section 1861 (v)).]

(A) the lesser of (i) the reasonable cost of such services, as determined under section 1861(v), or (ii) the customary charges with respect to such services; or

(B) if such services are furnished by a public provider of services free of charge or at nominal charges to the public, the amount determined in accordance with section 1814(b)(2); or

(C) if such services are services to which the next to last sentence of section 1861(p) applies, the reasonable charges for such services.<sup>3</sup>

(b) Before applying subsection (a) with respect to expenses incurred by an individual during any calendar year, the total amount of the expenses incurred by such individual during such year (which would, except for this subsection, constitute incurred expenses from which benefits payable under subsection (a) are determinable) shall be reduced by a deductible of [\$50] \$60,<sup>4</sup> except that (1) the amount of the deductible for such calendar year as so determined shall first be reduced by the amount of any expenses incurred by such individual in the last three months of the preceding calendar year and applied toward such individual's deductible under this section for such preceding year, and (2) such total amount shall not include expenses incurred for radiological or pathological services furnished to such individual as an inpatient of a hospital by a physician in the field of radiology or pathology. The total amount of the expenses incurred by an individual as determined under the preceding sentence shall, after the reduction specified in such sentence, be further reduced by an amount equal to the expenses incurred for the first three pints of whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished to the individual during the calendar year, except that such deductible for such blood shall in accordance with regulations be appropriately reduced to the extent that there has been a replacement of such blood (or equivalent quantities of packed

<sup>1</sup> Applies to services furnished with respect to admissions occurring after Dec. 31, 1971.

<sup>2</sup> Applies to services furnished by hospitals, extended care facilities, and home health agencies in accounting periods beginning after June 30, 1971.

<sup>3</sup> Applies to services furnished on or after Jan. 1, 1972.

<sup>4</sup> Effective with respect to calendar years after 1971 (except that, for purposes of applying clause (1) of the first sentence of section 1833(b) of the Act, shall be deemed to have taken effect on Jan. 1, 1971).

red blood cells, as so defined); and for such purposes blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual shall be deemed replaced when the institution or other person furnishing such blood (or such equivalent quantities of packed red blood cells, as so defined) is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual with respect to which a deduction is made under this sentence.

(c) Notwithstanding any other provision of this part, with respect to expenses incurred in any calendar year in connection with the treatment of mental, psychoneurotic, and personality disorders of an individual who is not an inpatient of a hospital at the time such expenses are incurred, there shall be considered as incurred expenses for purposes of subsections (a) and (b) only whichever of the following amounts is the smaller:

- (1) \$312.50, or
- (2) 62½ percent of such expenses.

(d) No payment may be made under this part with respect to any services furnished an individual to the extent that such individual is entitled (or would be entitled except for section 1813) to have payment made with respect to such services under part A.

(e) No payment shall be made to any provider of services or other person under this part unless there has been furnished such information as may be necessary in order to determine the amounts due such provider or other person under this part for the period with respect to which the amounts are being paid or for any prior period.

(f) In the case of the purchase of durable medical equipment included under section 1861(s)(6), by or on behalf of an individual, payment shall be made in such amounts as the Secretary determines to be equivalent to payments that would have been made under this part had such equipment been rented and over such period of time as the Secretary finds such equipment would be used for such individual's medical treatment, except that with respect to purchases of inexpensive equipment (as determined by the Secretary) payment may be made in a lump sum if the Secretary finds that such method of payment is less costly or more practical than periodic payments.

(g) *In the case of services described in the next to last sentence of section 1861(p), with respect to expenses incurred in any calendar year, no more than \$100 shall be considered as incurred expenses for purposes of subsections (a) and (b).*<sup>1</sup>

### Limitation on Home Health Services

**Sec. 1834.** (a) Payment under this part may be made for home health services furnished an individual during any calendar year only for 100 visits during such year. The number of visits to be charged for purposes of the limitation in the preceding sentence, in connection with items and services described in section 1861(m), shall be determined in accordance with regulations.

(b) For purposes of subsection (a), home health services shall be taken into account only if payment under this part is or would be,

<sup>1</sup> Applies to services furnished on or after Jan. 1, 1972.

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except for this section or the failure to comply with the request and certification requirements of or under section 1835(a), made with respect to such services.

### Procedure for Payment of Claims of Providers of Services

**Sec. 1835.** (a) Except as provided in [subsections (b) and (c)] subsections (b), (c), and (e),<sup>1</sup> payment for services described in section 1832(a)(2) furnished an individual may be made only to providers of services which are eligible therefor under section 1866(a), and only if—

(1) written request, signed by such individual except in cases in which the Secretary finds it impracticable for the individual to do so, is filed for such payment in such form, in such manner, within such time, and by such person or persons as the Secretary may by regulations prescribe; and

(2) a physician certifies (and recertifies, where such services are furnished over a period of time, in such cases, with such frequency, and accompanied by such supporting material, appropriate to the case involved, as may be provided by regulations) that—

(A) in the case of home health services (i) such services are or were required because the individual is or was confined to his home (except when receiving items and services referred to in section 1861(m)(7)) and needed skilled nursing care on an intermittent basis, or physical or speech therapy, (ii) a plan for furnishing such services to such individual has been established and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician;

(B) in the case of medical and other health services except services described in subparagraphs (B), (C), and (D) of section 1861(s)(2), such services are or were medically required; and

(C) in the case of outpatient physical therapy services, (i) such services are or were required because the individual needed physical therapy services [on an outpatient basis], (ii) a plan for furnishing such services has been established, and is periodically reviewed, by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician. For purposes of this section, the term "provider of services" shall include a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or agency meets the requirements of section 1861(p)(4)(A), or if, in the case of a public health agency, such agency meets the requirements of section 1861(p)(4)(B), but only with respect to the furnishing of outpatient physical therapy services (as therein defined).

To the extent provided by regulations, the certification and recertification requirements of paragraph (2) shall be deemed satisfied where, at a later date, a physician makes a certification of the kind provided in subparagraph (A) or (B) of paragraph (2) (whichever would have applied), but only where such certification is accompanied by such medical and other evidence as may be required by such regulations.

<sup>1</sup> Applies to accounting periods beginning after June 30, 1971.

(b)(1) Payment may also be made to any hospital for services described in section 1861(s) furnished as an outpatient service by a hospital or by others under arrangements made by it to an individual entitled to benefits under this part even though such hospital does not have an agreement in effect under this title if (A) such services were emergency services, (B) the Secretary would be required to make such payment if the hospital had such an agreement in effect and otherwise met the conditions of payment hereunder, and (C) such hospital has made an election pursuant to section 1814(d)(1)(C) with respect to the calendar year in which such emergency services are provided. Such payments shall be made only in the amounts provided under section 1833(a)(2) and then only if such hospital agrees to comply, with respect to the emergency services provided, with the provisions of section 1866(a).

(2) Payment may also be made on the basis of an itemized bill to an individual for services described in paragraph (1) of this subsection if (A) payment cannot be made under such paragraph (1) solely because the hospital does not elect, in accordance with section 1814(d)(1)(C), to claim such payments and (B) such individual files application (submitted within such time and in such form and manner, and containing and supported by such information as the Secretary shall by regulations prescribe) for reimbursement. The amounts payable under this paragraph shall, subject to the provisions of section 1833, be equal to 80 percent of the hospital's reasonable charges for such services.

(c) Notwithstanding the provisions of this section and sections 1832, 1833, and 1866(a)(1)(A), a hospital may, subject to such limitations as may be prescribed by regulations, collect from an individual the customary charges for services specified in section 1861(s) and furnished to him by such hospital as an outpatient, [but only if such charges for such services do not exceed \$50] *but only if such charges for such services do not exceed the applicable supplementary medical insurance deductible,*<sup>1</sup> and such customary charges shall be regarded as expenses incurred by such individual with respect to which benefits are payable in accordance with section 1833(a)(1). Payments under this title to hospitals which have elected to make collections from individuals in accordance with the preceding sentence shall be adjusted periodically to place the hospital in the same position it would have been had it instead been reimbursed in accordance with section 1833(a)(2).

(d) No payment may be made under this part to any Federal provider of services or other Federal agency, except a provider of services which the Secretary determines is providing services to the public generally as a community institution or agency; and no such payment may be made to any provider of services or other person for any item or service which such provider or person is obligated by a law of, or a contract with, the United States to render at public expense.

(e) *For purposes of services (1) which are inpatient hospital services by reason of paragraph (7) of section 1861(b) or for which entitlement exists by reason of clause (II) of section 1832(a)(2)(B)(i), and (2) for which the reasonable cost thereof is determined under section 1861(v)(1)(D), payment under this part shall be made to such fund as may be desig-*

<sup>1</sup> Effective with respect to calendar years after 1971 (except that, for purposes of applying clause (1) of the first sentence of section 1833(b) of the Act, shall be deemed to have taken effect on Jan. 1, 1971).

nated by the organized medical staff of the hospital in which such services were furnished or, if such services were furnished in such hospital by the faculty of a medical school, to such fund as may be designated by such faculty, but only if<sup>1</sup>—

(1) such hospital has an agreement with the Secretary under section 1866, and

(2) the Secretary has received written assurances that such payment will be used by such fund solely for the improvement of care to patients in such hospital or for educational or charitable purposes and (B) the individuals who were furnished such services or any other persons will not be charged for such services (or if charged provision will be made for return for any moneys incorrectly collected).

### Eligible Individuals

**Sec. 1836.** Every individual who—

[(1) has attained the age of 65, and

[(2) (A) is a resident of the United States, and is either (i) a citizen or (ii) an alien lawfully admitted for permanent residence who has resided in the United States continuously during the 5 years immediately preceding the month in which he applies for enrollment under this part, or (B) is entitled to hospital insurance benefits under part A,

is eligible to enroll in the insurance program established by this part.]

(1) is entitled to hospital insurance benefits under part A, or

(2) has attained age 65 and is a resident of the United States, and is either (A) a citizen or (B) an alien lawfully admitted for permanent residence who has resided in the United States continuously during the 5 years immediately preceding the month in which he applies for enrollment under this part,

is eligible to enroll in the insurance program established by this part.

### Enrollment Periods

**Sec. 1837.** (a) An individual may enroll in the insurance program established by this part only in such manner and form as may be prescribed by regulations, and only during an enrollment period prescribed in or under this section.

[(b)(1) No individual may enroll for the first time under this part unless he does so in a general enrollment period (as provided in subsection (e)) which begins within 3 years after the close of the first enrollment period during which he could have enrolled under this part.

[(2) An individual whose enrollment under this part has terminated may not enroll for the second time under this part unless he does so in a general enrollment period (as provided in subsection (e)) which begins within 3 years after the effective date of such termination. No individual may enroll under this part more than twice.]

(b) No individual may enroll under this part more than twice.

(c) In the case of individuals who first satisfy [paragraphs (1) and] paragraph (1) or (2) of section 1836 before March 1, 1966, the initial general enrollment period shall begin on the first day of the second month which begins after the date of enactment of this title and shall end on May 31, 1966. [For purposes of this subsection and subsection

<sup>1</sup> Applies to accounting periods beginning after June 30, 1971.



(d), an individual who satisfies paragraph (2) of section 1836 solely by reason of subparagraph (B) thereof shall be treated as satisfying such paragraph (2) on the first day on which he is (or on filing application would be) entitled to hospital insurance benefits under part A. ] *For purposes of this subsection and subsection (d), an individual who has attained age 65 and who satisfies paragraph (1) of section 1836 but not paragraph (2) of such section shall be treated as satisfying such paragraph (1) on the first day on which he is (or on filing application would have been) entitled to hospital insurance benefits under part A.*

(d) In the case of an individual who first satisfies [paragraphs (1) and (2)] *paragraph (1) or (2) of section 1836 on or after March 1, 1966, his initial enrollment period shall begin on the first day of the third month before the month in which he first satisfies such paragraphs and shall end seven months later. Where the Secretary finds that an individual who has attained age 65 failed to enroll under this part during his initial enrollment period (based on a determination by the Secretary of the month in which such individual attained age 65), because such individual (relying on documentary evidence) was mistaken as to his correct date of birth, the Secretary shall establish for such individual an initial enrollment period based on his attaining age 65 at the time shown in such documentary evidence (with a coverage period determined under section 1838 as though he had attained such age at that time).*

(e) There shall be a general enrollment period, after the period described in subsection (c), during the period beginning on January 1 and ending on March 31 of each year beginning with 1969.

(f) *Any individual—*

(1) *who is eligible under section 1836 to enroll in the medical insurance program by reason of entitlement to hospital insurance benefits as described in paragraph (1) of such section, and*

(2) *whose initial enrollment period under subsection (d) begins on or after the first day of the second month following the month in which this subsection is enacted, or October 1, 1971, whichever is later,*

*shall be deemed to have enrolled in the medical insurance program established by this part.*

(g) *All of the provisions of this section shall apply to individuals satisfying subsection (f), except that—*

(1) *in the case of an individual who satisfies subsection (f) by reason of entitlement to disability insurance benefits described in section 226(a)(2)(B), his initial enrollment period shall begin on the first day of the later of (A) April 1972 or (B) the third month before the 25th consecutive month of such entitlement, and shall reoccur with each continuous period of eligibility (as defined in section 1839(e)) and upon attainment of age 65;*

(2)(A) *in the case of an individual who is entitled to monthly benefits under section 202 or 223 on the first day of his initial enrollment period or becomes entitled to monthly benefits under section 202 during the first 3 months of such period, his enrollment shall be deemed to have occurred in the third month of his initial enrollment period, and*

(B) *in the case of an individual who is not entitled to benefits under section 202 on the first day of his initial enrollment period and does not become so entitled during the first 3 months of such period,*

his enrollment shall be deemed to have occurred in the month in which he files the application establishing his entitlement to hospital insurance benefits provided such filing occurs during the last 4 months of his initial enrollment period; and

(3) in the case of an individual who would otherwise satisfy subsection (f) but does not establish his entitlement to hospital insurance benefits until after the last day of his initial enrollment period (as defined in subsection (d) of this section), his enrollment shall be deemed to have occurred on the first day of the earlier of the then current or immediately succeeding general enrollment period (as defined in subsection (e) of this section).

(h) In any case where the Secretary finds that an individual's enrollment or nonenrollment in the insurance program established by this part is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Department of Health, Education, and Welfare, the Secretary may take such action (including the designation for such individual of a special initial or subsequent enrollment period, with a coverage period determined on the basis thereof and with appropriate adjustments of premiums) as may be necessary to correct, or eliminate the effects of such error, misrepresentation, or inaction.<sup>1</sup>

#### Coverage Period

**Sec. 1838.** (a) The period during which an individual is entitled to benefits under the insurance program established by this part (hereinafter referred to as his "coverage period") shall begin on whichever of the following is the latest:

(1) [July 1, 1966] July 1, 1966 or (in the case of a disabled individual who has not attained age 65) July 1, 1972, or

(2)(A) in the case of an individual who enrolls pursuant to subsection (d) of section 1837 before the month in which he first satisfies [paragraphs (1) and] paragraph (1) or (2) of section 1836, the first day of such month, or

(B) in the case of an individual who enrolls pursuant to such subsection (d) in the month in which he first satisfies such paragraph[s], the first day of the month following the month in which he so enrolls, or

(C) in the case of an individual who enrolls pursuant to such subsection (d) in the month following the month in which he first satisfies such paragraph[s], the first day of the second month following the month in which he so enrolls, or

(D) in the case of an individual who enrolls pursuant to such subsection (d) more than one month following the month in which he satisfies such paragraph[s], the first day of the third month following the month in which he so enrolls, or

(E) in the case of an individual who enrolls pursuant to subsection (e) of section 1837, the July 1 following the month in which he so enrolls; or

(3)(A) in the case of an individual who is deemed to have enrolled on or before the last day of the third month of his initial enrollment period, the first day of the month in which he first meets the applicable requirements of section 1836 or January 1, 1972, whichever is later, or

<sup>1</sup> Effective as of July 1, 1966:

*(B) in the case of an individual who is deemed to have enrolled on or after the first day of the fourth month of his initial enrollment period, as prescribed under subparagraphs (B), (C), (D); and (E) of paragraph (2) of this subsection.*

(b) An individual's coverage period shall continue until his enrollment has been terminated—

(1) by the filing of notice that the individual no longer wishes to participate in the insurance program established by this part, or

(2) for nonpayment of premiums.

The termination of a coverage period under paragraph (1) shall take effect at the close of the calendar quarter following the calendar quarter in which the notice is filed. The termination of a coverage period under paragraph (2) shall take effect on a date determined under regulations, which may be determined so as to provide a grace period [(not in excess of 90 days)]<sup>1</sup> in which overdue premiums may be paid and coverage continued. *The grace period determined under the preceding sentence shall not exceed 90 days; except that it may be extended to not to exceed 180 days in any case where the Secretary determines that there was good cause for failure to pay the overdue premiums within such 90-day period.*

*Where an individual who is deemed to have enrolled for medical insurance pursuant to section 1837(f) files a notice before the first day of the month in which his coverage period begins advising that he does not wish to be so enrolled, the termination of the coverage period resulting from such deemed enrollment shall take effect with the first day of the month the coverage would have been effective and such notice shall not be considered a disenrollment for the purposes of section 1837(b). Where an individual who is deemed enrolled for medical insurance benefits pursuant to section 1837(f) files a notice requesting termination of his deemed coverage in or after the month in which such coverage becomes effective, the termination of such coverage shall take effect at the close of the calendar quarter following the calendar quarter in which the notice is filed.*

(c) *In the case of an individual satisfying paragraph (1) of section 1836 whose entitlement to hospital insurance benefits under part A is based on a disability rather than on his having attained the age of 65, his coverage period (and his enrollment under this part) shall be terminated as of the close of the last month for which he is entitled to hospital insurance benefits.*

[(c)](d) No payments may be made under this part with respect to the expenses of an individual unless such expenses were incurred by such individual during a period which, with respect to him, is a coverage period.

### Amounts of Premiums

**Sec. 1839.** (a) The monthly premium of each individual enrolled under this part for each month before 1968 shall be \$3.

(b)(1) The monthly premium of each individual enrolled under this part for each month after 1967 and before July 1, 1972, shall be the amount determined under paragraph (2).

(2) The Secretary shall, during December 1968 and of each year [thereafter] ending on or before December 31, 1970, determine and

<sup>1</sup> Applies to nonpayment of premiums which become due and payable on or after the date of enactment or which became payable within the 90-day period immediately preceding such date; and for purposes of this amendment any premium which became due and payable within such 90-day period shall be considered a premium becoming due and payable on the date of enactment.

promulgate the dollar amount (whether or not such dollar amount was applicable for premiums for any prior month) which shall be applicable for premiums for months occurring in the 12-month period commencing July 1 in each succeeding year. Such dollar amount shall be such amount as the Secretary estimates to be necessary so that the aggregate premiums for such 12-month period will equal one-half of the total of the benefits and administrative costs which he estimates will be payable from the Federal Supplementary Medical Insurance Trust Fund for such 12-month period. In estimating aggregate benefits payable for any period, the Secretary shall include an appropriate amount for a contingency margin. Whenever the Secretary, pursuant to the preceding sentence, promulgates the dollar amount which shall be applicable for premiums for any period, he shall, at the time such promulgation is announced, issue a public statement setting forth the actuarial assumptions and bases employed by him in arriving at the amount of premiums so promulgated.

(c)(1) *The Secretary shall, during December of 1971 and of each year thereafter, determine the monthly actuarial rate for enrollees age 65 and over which shall be applicable for the 12-month period commencing July 1 in the succeeding year. Such actuarial rate shall be the amount the Secretary estimates to be necessary so that the aggregate amount for such 12-month period with respect to those enrollees age 65 and over will equal one-half of the total of the benefits and administrative costs which he estimates will be payable from the Federal Supplementary Medical Insurance Trust Fund for services performed and related administrative costs incurred in such 12-month period. In calculating the monthly actuarial rate, the Secretary shall include an appropriate amount for a contingency margin.*

(2) *The monthly premium of each individual enrolled under this part for each month after June 1972 shall be the amount determined under paragraph (3).*

(3) *The Secretary shall, during December of 1971 and of each year thereafter, determine and promulgate the monthly premium applicable for the individuals enrolled under this part for the 12-month period commencing July 1 in the succeeding year. The monthly premium shall be equal to the smaller of—*

(A) *the monthly actuarial rate for enrollees age 65 and over, determined according to paragraph (1) of this subsection, for that 12-month period, or*

(B) *the monthly premium rate most recently promulgated by the Secretary under this paragraph multiplied by the ratio of (i) the amount in column IV of the table which as of June 1 next following such determination appears (or is deemed to appear) in section 215(a) on the line which includes the figure "750" in column III of such table to (ii) the amount in column IV of the table which appeared (or was deemed to appear) in section 215(a) on the line which included the figure "750" in column III as of June 1 of the year in which such determination is made.*

*Whenever the Secretary promulgates the dollar amount which shall be applicable as the monthly premium for any period, he shall, at the time such promulgation is announced, issue a public statement setting forth the actuarial assumptions and bases employed by him in arriving at the amount of an adequate actuarial rate for enrollees age 65 and over as provided in paragraph (1) and the derivation of the dollar amounts specified in this paragraph.*

(4) *The Secretary shall also, during December of 1971 and of each year thereafter, determine the monthly actuarial rate for disabled enrollees under age 65 which shall be applicable for the 12-month period commencing July 1 in the succeeding year. Such actuarial rate shall be the amount the Secretary estimates to be necessary so that the aggregate amount for such 12-month period with respect to disabled enrollees under age 65 will equal one-half of the total of the benefits and administrative costs which he estimates will be incurred by the Federal Supplementary Medical Insurance Trust Fund for such 12-month period with respect to such enrollees. In calculating the monthly actuarial rate under this paragraph, the Secretary shall include an appropriate amount for a contingency margin.*

(d) [(c)] In the case of an individual whose coverage period began pursuant to an enrollment after his initial enrollment period (determined pursuant to subsection (c) or (d) of section 1837), the monthly premium determined under subsection (b) or (c) shall be increased by 10 percent of the monthly premium so determined for each full 12 months (*in the same continuous period of eligibility*) in which he could have been but was not enrolled. For purposes of the preceding sentence, there shall be taken into account (1) the months which elapsed between the close of his initial enrollment period and the close of the enrollment period in which he enrolled, plus (in the case of an individual who enrolls for a second time) (2) the months which elapsed between the date of the termination of his first coverage period and the close of the enrollment period in which he enrolled for the second time. *Any increase in an individual's monthly premium under the first sentence of this subsection with respect to a particular continuous period of eligibility shall not be applicable with respect to any other continuous period of eligibility which such individual may have.*

[(d)] (e) If any monthly premium determined under the foregoing provisions of this section is not a multiple of 10 cents, such premium shall be rounded to the nearest multiple of 10 cents.

[(e)] (f) *For purposes of subsection [(c)] (d) (and section 1837(g)(1)), an individual's "continuous period of eligibility" is the period beginning with the first day on which he is eligible to enroll under section 1836 and ending with his death; except that any period during all of which an individual satisfied paragraph (1) of section 1836 and which terminated in or before the month preceding the month in which he attained age 65 shall be a separate "continuous period of eligibility" with respect to such individual (and each such period which terminates shall be deemed not to have existed for purposes of subsequently applying this section).*

### Payment of Premiums

**Sec. 1840.** (a)(1) In the case of an individual who is entitled to monthly benefits under section 202 or 223, his monthly premiums under this part shall (except as provided in [(subsection (d))] subsections (b)(1) and (c))<sup>1</sup> be collected by deducting the amount thereof from the amount of such monthly benefits. Such deduction shall be made in such manner and at such times as the Secretary shall by regulation prescribe.

(2) The Secretary of the Treasury shall, from time to time, transfer from the Federal Old-Age and Survivors Insurance Trust Fund or the

<sup>1</sup> Applies to premiums becoming due and payable after the fourth month following the month of enactment.

Federal Disability Insurance Trust Fund to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates from benefits under section 202 or 203 which are payable from such Trust Fund. Such transfer shall be made on the basis of a certification by the Secretary of Health, Education, and Welfare and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

(b)(1) In the case of an individual who is entitled to receive for a month an annuity or pension under the Railroad Retirement Act of 1937 (whether or not such individual is also entitled for such month to a monthly insurance benefit under section 202),<sup>1</sup> his monthly premiums under this part shall (except as provided in subsection [(d)](c))<sup>1</sup> be collected by deducting the amount thereof from such annuity or pension. Such deduction shall be made in such manner and at such times as the Secretary shall by regulations prescribe. Such regulations shall be prescribed only after consultation with the Railroad Retirement Board.

(2) The Secretary of the Treasury shall, from time to time, transfer from the Railroad Retirement Account to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates. Such transfers shall be made on the basis of a certification by the Railroad Retirement Board and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

[(c) In the case of an individual who is entitled both to monthly benefits under section 202 and to an annuity or pension under the Railroad Retirement Act of 1937 at the time he enrolls under this part, subsection (a) shall apply so long as he continues to be entitled both to such benefits and such annuity or pension. In the case of an individual who becomes entitled both to such benefits and such an annuity or pension after he enrolls under this part, subsection (a) shall apply if the first month for which he was entitled to such benefits was the same as or earlier than the first month for which he was entitled to such annuity or pension, and otherwise subsection (b) shall apply.]<sup>1</sup>

[(d)] (c) If an individual to whom subsection (a) or (b) applies estimates that the amount which will be available for deduction under such subsection for any premium payment period will be less than the amount of the monthly premiums for such period, he may (under regulations) pay to the Secretary such portion of the monthly premiums for such period as he desires.

[e] (d) (1) In the case of an individual receiving an annuity under subchapter III of chapter 83 of title 5, United States Code, or any other law administered by the Civil Service Commission providing retirement or survivorship protection, to whom neither subsection (a) nor subsection (b) applies, his monthly premiums under this part (and the monthly premiums of the spouse of such individual under this part if neither subsection (a) nor subsection (b) applies to such spouse and if such individual agrees) shall, upon notice from the Secretary of Health, Education, and Welfare to the Civil Service Commission, be collected by deducting the amount thereof from each installment of

<sup>1</sup> Applies to premiums becoming due and payable after the fourth month following the month of enactment.

such annuity. Such deduction shall be made in such manner and at such times as the Civil Service Commission may determine. The Civil Service Commission shall furnish such information as the Secretary of Health, Education, and Welfare may reasonably request in order to carry out his functions under this part with respect to individuals to whom this subsection applies. A plan described in section 8903 of title 5, United States Code, may reimburse each annuitant enrolled in such plan an amount equal to the premiums paid by him under this part if such reimbursement is paid entirely from funds of such plan which are derived from sources other than the contributions described in section 8906 of such title.

(2) The Secretary of the Treasury shall, from time to time, but not less often than quarterly, transfer from the Civil Service Retirement and Disability Fund, or the account (if any) applicable in the case of such other law administered by the Civil Service Commission, to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates. Such transfer shall be made on the basis of a certification by the Civil Service Commission and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

[(f)] (e) In the case of an individual who participates in the insurance program established by this part but with respect to whom none of the preceding provisions of this section applies, or with respect to whom subsection [(d)] (c)<sup>1</sup> applies, the premiums shall be paid to the Secretary at such times, and in such manner, as the Secretary shall by regulations prescribe.

[(g)] (f) Amounts paid to the Secretary under subsection [(d) or (f)] (c) or (e) shall be deposited in the Treasury to the credit of the Federal Supplementary Medical Insurance Trust Fund.

[(h)] (g) In the case of an individual who participates in the insurance program established by this part, premiums shall be payable for the period commencing with the first month of his coverage period and ending with the month in which he dies or, if earlier, in which his coverage under such program terminates.

(h) [(i)] In the case of an individual who is enrolled under the program established by this part as a member of a coverage group to which an agreement with a State entered into pursuant to section 1843 is applicable, subsection (a), (b), (c), [(d), and (e)] and (d)<sup>1</sup> of this section shall not apply to his monthly premium for any month in his coverage period which is determined under section 1843(d).

### Federal Supplementary Medical Insurance Trust Fund

Sec. 1841. (a) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Supplementary Medical Insurance Trust Fund" (hereinafter in this section referred to as the "Trust Fund"). The Trust Fund shall consist of *such gifts and bequests as may be made as provided in section 201(i)(1), and*<sup>2</sup> such amounts as may be deposited in, or appropriated to, such fund as provided in this part.

<sup>1</sup> Applies to premiums becoming due and payable after the fourth month following the month of enactment.

<sup>2</sup> Applies to gifts and bequests received after the date of enactment.

(b) With respect to the Trust Fund, there is hereby created a body to be known as the Board of Trustees of the Trust Fund (hereinafter in this section referred to as the "Board of Trustees") composed of the Secretary of the Treasury, the Secretary of Labor and the Secretary of Health, Education, and Welfare, all ex officio. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this section referred to as the "Managing Trustee"). The Commissioner of Social Security shall serve as the Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

- (1) Hold the Trust Fund;
- (2) Report to the Congress not later than the first day of April of each year on the operation and status of the Trust Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next 2 fiscal years;
- (3) Report immediately to the Congress whenever the Board is of the opinion that the amount of the Trust Fund is unduly small; and
- (4) Review the general policies followed in managing the Trust Fund, and recommend changes in such policies, including necessary changes in the provisions of law which govern the way in which the Trust Fund is to be managed.

The report provided for in paragraph (2) shall include a statement of the assets of, and the disbursements made from, the Trust Fund during the preceding fiscal year, an estimate of the expected income to, and disbursements to be made from, the Trust Fund during the current fiscal year and each of the next 2 fiscal years, and a statement of the actuarial status of the Trust Fund. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(c) It shall be the duty of the Managing Trustee to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Fund. Such obligations issued for purchase by the Trust Fund shall have maturities fixed with due regard for the needs of the Trust Fund and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or



obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

(d) Any obligations acquired by the Trust Fund (except public debt obligations issued exclusively to the Trust Fund) may be sold by the Managing Trustee at the market price, and such public-debt obligations may be redeemed at par plus accrued interest.

(e) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(f) There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Federal Old-Age and Survivors Insurance Trust Fund and from the Federal Disability Insurance Trust Fund amounts equivalent to the amounts not previously so transferred which the Secretary of Health, Education, and Welfare shall have certified as overpayments (other than amounts so certified to the Railroad Retirement Board) pursuant to section 1870(b) of this Act. There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Railroad Retirement Account amounts equivalent to the amounts not previously so transferred which the Secretary of Health, Education, and Welfare shall have certified as overpayments to the Railroad Retirement Board pursuant to section 1870(b) of this Act.

(g) The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health, Education, and Welfare certifies are necessary to make the payments provided for by this part, and the payments with respect to administrative expenses in accordance with section 201(g)(1).

(h) The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health, Education, and Welfare certifies are necessary to pay the costs incurred by the Civil Service Commission in making deductions pursuant to section 1840 [(e)] (d). During each fiscal year, or after the close of such fiscal year, the Civil Service Commission shall certify to the Secretary the amount of the costs it incurred in making such deductions, and such certified amount shall be the basis for the amount of such costs certified by the Secretary to the Managing Trustee.

(i) *The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health, Education, and Welfare certifies are necessary to pay the costs incurred by the Railroad Retirement Board for services performed pursuant to section 1840(b)(1) and section 1842(g). During each fiscal year or after the close of such fiscal year, the Railroad Retirement Board shall certify to the Secretary the amount of the costs it incurred in performing such services and such certified amount shall be the basis for the amount of such costs certified by the Secretary to the Managing Trustee.*<sup>1</sup>

### Use of Carriers for Administration of Benefits

**Sec. 1842.** (a) In order to provide for the administration of the benefits under this part with maximum efficiency and convenience for individuals entitled to benefits under this part and for providers of

<sup>1</sup> Applies to premiums becoming due and payable after the fourth month following the month of enactment.

services and other persons furnishing services to such individuals, and with a view to furthering coordination of the administration of the benefits under part A and under this part, the Secretary is authorized to enter into contracts with carriers, including carriers with which agreements under section 1816 are in effect, which will perform some or all of the following functions (or, to the extent provided in such contracts, will secure performance thereof by other organizations); and, with respect to any of the following functions which involve payments for physicians' services *on a reasonable charge basis*,<sup>1</sup> the Secretary shall to the extent possible enter into such contracts:

(1)(A) make determinations of the rates and amounts of payments required pursuant to this part to be made to providers of services and other persons on a reasonable cost or reasonable charge basis (as may be applicable);

(B) receive, disburse, and account for funds in making such payments; and

(C) make such audits of the records of providers of services as may be necessary to assure that proper payments are made under this part;

(2)(A) determine compliance with the requirements of section 1861(k) as to utilization review; and

(B) assist providers of services and other persons who furnish services for which payment may be made under this part in the development of procedures relating to utilization practices, make studies of the effectiveness of such procedures and methods for their improvement, assist in the application of safeguards against unnecessary utilization of services furnished by providers of services and other persons to individuals entitled to benefits under this part, and provide procedures for and assist in arranging, where necessary, the establishment of groups outside hospitals (meeting the requirements of section 1861(k)(2)) to make reviews of utilization;

(3) serve as a channel of communication of information relating to the administration of this part; and

(4) otherwise assist, in such manner as the contract may provide, in discharging administrative duties necessary to carry out the purposes of this part.

(b)(1) Contracts with carriers under subsection (a) may be entered into without regard to section 3709 of the Revised Statutes or any other provision of law requiring competitive bidding.

(2) No such contract shall be entered into with any carrier unless the Secretary finds that such carrier will perform its obligations under the contract efficiently and effectively and will meet such requirements as to financial responsibility, legal authority, and other matters as he finds pertinent.

(3) Each such contract shall provide that the carrier—

(A) will take such action as may be necessary to assure that, where payment under this part for a service is on a cost basis, the cost is reasonable cost (as determined under section 1861(v));

(B) will take such action as may be necessary to assure that, where payment under this part for a service is on a charge basis, such charge will be reasonable and not higher than the charge

<sup>1</sup> Applies to accounting periods beginning after June 30, 1971.

applicable, for a comparable service and under comparable circumstances, to the policyholders and subscribers of the carrier, and such payment will (except as otherwise provided in section 1870 (f)) be made—

(i) on the basis of an itemized bill; or

(ii) on the basis of an assignment under the terms of which the reasonable charge is the full charge for the service (except in the case of physicians' services and ambulance service furnished as described in section 1862(a)(4), other than for purposes of section 1870(f));<sup>1</sup>

but (in the case of bills submitted, or requests for payment made, after March 1968) only if the bill is submitted, or a written request for payment is made in such other form as may be permitted under regulations, no later than the close of the calendar year following the year in which such service is furnished (deeming any service furnished in the last 3 months of any calendar year to have been furnished in the succeeding calendar year);

(C) will establish and maintain procedures pursuant to which an individual enrolled under this part will be granted an opportunity for a fair hearing by the carrier, in any case where the amount in controversy is \$100 or more,<sup>2</sup> when requests for payment under this part with respect to services furnished him are denied or are not acted upon with reasonable promptness or when the amount of such payment is in controversy;

(D) will furnish to the Secretary such timely information and reports as he may find necessary in performing his functions under this part; and

(E) will maintain such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of the information and reports under subparagraph (D) and otherwise to carry out the purposes of this part;

and shall contain such other terms and conditions not inconsistent with this section as the Secretary may find necessary or appropriate. In determining the reasonable charge for services for purposes of this paragraph, there shall be taken into consideration the customary charges for similar services generally made by the physician or other person furnishing such services, as well as the prevailing charges in the locality for similar services.

*No charge may be determined to be reasonable in the case of bills submitted or requests for payment made under this part after December 31, 1970, if it exceeds the higher of (i) the prevailing charge recognized by the carrier and found acceptable by the Secretary for similar services in the same locality in administering this part on December 31, 1970, or (ii) the prevailing charge level that, on the basis of statistical data and methodology acceptable to the Secretary, would cover 75 percent of the customary charges made for similar services in the same locality during the last preceding calendar year elapsing prior to the start of the fiscal year in which the bill is submitted or the request for payment is made. The prevailing charge level determined for purposes of clause (ii) of the preceding sentence for any fiscal year beginning after June 30, 1972,*

<sup>1</sup> Applies to services furnished with respect to admissions occurring after Dec. 31, 1971.

<sup>2</sup> Applies to hearings requested (under the procedures established under section 1842(b)(3)(C) of the Act) after the date of enactment.

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may not exceed (in the aggregate) the level determined under such clause for the fiscal year ending June 30, 1972, except to the extent that the Secretary finds, on the basis of appropriate economic index data, that such higher level is justified by economic changes. In the case of medical services, supplies, and equipment that, in the judgment of the Secretary, do not generally vary significantly in quality from one supplier to another, the charges incurred after June 30, 1972, determined to be reasonable may exceed the lowest charge levels at which such services, supplies, and equipment are widely available in a locality only to the extent and under the circumstances specified by the Secretary. The requirement in subparagraph (B) that a bill be submitted or request for payment be made by the close of the following calendar year shall not apply if (i) failure to submit the bill or request the payment by the close of such year is due to the error or misrepresentation of an officer, employee, fiscal intermediary, carrier, or agent of the Department of Health, Education, and Welfare performing functions under this title and acting within the scope of his or its authority, and (ii) the bill is submitted or the payment is requested promptly after such error or misrepresentation is eliminated or corrected.<sup>1</sup>

(4) Each contract under this section shall be for a term of at least one year, and may be made automatically renewable from term to term in the absence of notice by either party of intention to terminate at the end of the current term; except that the Secretary may terminate any such contract at any time (after such reasonable notice and opportunity for hearing to the carrier involved as he may provide in regulations) if he finds that the carrier 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 the insurance program established by this part.

(5) No payment under this part for a service provided to any individual shall (except as provided in section 1870) be made to anyone other than such individual or (pursuant to an assignment described in subparagraph (B)(ii) of paragraph (3)) the physician or other person who provided the service, except that payment may be made (A) to the employer of such physician or other person if such physician or other person is required as a condition of his employment to turn over his fee for such service to his employer, or (B) (where the service was provided in a hospital, clinic, or other facility) to the facility in which the service was provided if there is a contractual arrangement between such physician or other person and such facility under which such facility submits the bill for such service.<sup>2</sup>

(c) Any contract entered into with a carrier under this section shall provide for advances of funds to the carrier for the making of payments by it under this part, and shall provide for payment of the cost of administration of the carrier, as determined by the Secretary to be necessary and proper for carrying out the functions covered by the contract.

(d) Any contract with a carrier under this section may require such carrier or any of its officers or employees certifying payments or disbursing funds pursuant to the contract, or otherwise participating in carrying out the contract, to give surety bond to the United States in such amount as the Secretary may deem appropriate.

(e)(1) No individual designated pursuant to a contract under this section as a certifying officer shall, in the absence of gross negligence

<sup>1</sup> Applies to bills submitted and requests for payment made after March 1968.

<sup>2</sup> Applies with respect to bills submitted and requests for payments made after the date of enactment.

or intent to defraud the United States, be liable with respect to any payments certified by him under this section.

(2) No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this section if it was based upon a voucher signed by a certifying officer designated as provided in paragraph (1) of this subsection.

(3) No such carrier shall be liable to the United States for any payments referred to in paragraph (1) or (2).

(f) For purpose of this part, the term "carrier" means—

(1) with respect to providers of services and other persons, a voluntary association, corporation, partnership, or other non-governmental organization which is lawfully engaged in providing, paying for, or reimbursing the cost of, health services under group insurance policies or contracts, medical or hospital service agreements membership or subscription contracts, or similar group arrangements, in consideration of premiums or other periodic charges payable to the carrier, including a health benefits plan duly sponsored or underwritten by an employee organization; and

(2) with respect to providers of services only, any agency or organization (not described in paragraph (1)) with which an agreement is in effect under section 1816.

(g) *The Railroad Retirement Board shall, in accordance with such regulations as the Secretary may prescribe, contract with a carrier or carriers to perform the functions set out in this section with respect to individuals entitled to benefits as qualified railroad retirement beneficiaries pursuant to section 226(a) of this Act and section 21(b) of the Railroad Retirement Act of 1937.*<sup>1</sup>

### **State Agreements for Coverage of Eligible Individuals Who Are Receiving Money Payments Under Public Assistance Programs (or Are Eligible for Medical Assistance)**

**Sec. 1843.** [(a) The Secretary shall, at the request of a State made before January 1, 1970, enter into an agreement with such State pursuant to which all eligible individuals in either of the coverage groups described in subsection (b) (as specified in the agreement) will be enrolled under the program established by this part.

[(b) An agreement entered into with any State pursuant to subsection (a) may be applicable to either of the following coverage groups:

[(1) individuals receiving money payments under the plan of such State approved under title I or title XVI; or

[(2) individuals receiving money payments under all of the plans of such State approved under titles I, X, XIV, and XVI, and part A of title IV.

[Except as provided in subsection (g), there shall be excluded from any coverage group any individual who is entitled to monthly insurance benefits under title II or who is entitled to receive an annuity or pension under the Railroad Retirement Act of 1937.]

(a) *Subject to section 1902(e), the Secretary at the request of any State shall, notwithstanding the repeal of titles I, X, and XIV by section 303 of*

<sup>1</sup> Applies to premiums becoming due and payable after the fourth month following the month of enactment.

*the Social Security Amendments of 1971 and the amendments made to title XVI and part A of title IV by sections 302 and 402 of such Amendments, continue in effect the agreement entered into under this section with such State insofar as it includes individuals who are eligible to receive benefits under title XX or XXI or are otherwise eligible to receive medical assistance under the plan of such State approved under title XIX:*

(b) *The provisions of subsection (h)(2) of this section as in effect before the effective date of the repeal and amendments referred to in subsection (a) shall continue to apply with respect to the individuals included in any such agreement after such date.*

(c) For purposes of this section, an individual shall be treated as an eligible individual only if he is an eligible individual (within the meaning of section 1836) on the date an agreement covering him is entered into under subsection (a) or he becomes an eligible individual (within the meaning of such section) at any time after such date [; and he shall be treated as receiving money payments described in subsection (b) if he receives such payments for the month in which the agreement is entered into or any month thereafter].

(d) In the case of any individual enrolled pursuant to this section—

(1) the monthly premium to be paid by the State shall be determined under section 1839 (without any increase under subsection (c) thereof);

(2) his coverage period shall begin on whichever of the following is the latest:

(A) July 1, 1966;

(B) the first day of the third month following the month in which the State agreement is entered into;

(C) the first day of the first month in which he is both an eligible individual and a member of a coverage group specified in the agreement under this section; or

(D) such date as may be specified in the agreement; and

(3) his coverage period attributable to the agreement with the State under this section shall end on the last day of [whichever of the following first occurs:

[(A) the month in which he is determined by the State agency to have become ineligible both for money payments of a kind specified in the agreement and (if there is in effect a modification entered into under subsection (h)) for medical assistance, or

[(B) the month preceding the first month for which he becomes entitled to monthly benefits under title II or to an annuity or pension under the Railroad Retirement Act of 1937.]

*any month in which he is determined by the State agency to have become ineligible for medical assistance.*

(e) Any individual whose coverage period attributable to the State agreement is terminated pursuant to subsection (d)(3) shall be deemed for purposes of this part (including the continuation of his coverage period under this part) to have enrolled under section 1837 in the initial general enrollment period provided by section 1837(c).

(f) With respect to eligible individuals [receiving money payments under the plan of a State approved under title I, X, XIV, or XVI or

part A of title IV, or] eligible to receive medical assistance under the plan of such State approved under title XIX, [if the agreement entered into under this section so provides,] the term "carrier" as defined in section 1842(f) also includes the State agency, specified in such agreement, which administers or supervises the administration of the plan of such State approved under title [I, XVI, or] XIX. The agreement shall also contain such provisions as will facilitate the financial transactions of the State and the carrier with respect to deductions, coinsurance, and otherwise, and as will lead to economy and efficiency of operation, with respect to [individuals receiving money payments under plans of the State approved under titles I, X, XIV, and XVI, and part A of title IV, and] individuals eligible to receive medical assistance under the plan of the State approved under title XIX.

[(g)(1) The Secretary shall, at the request of a State made before January 1, 1970, enter into a modification of an agreement entered into with such State pursuant to subsection (a) under which the second sentence of subsection (b) shall not apply with respect to such agreement.

[(2) In the case of any individual who would (but for this subsection) be excluded from the applicable coverage group described in subsection (b) by the second sentence of such subsection—

[(A) subsections (c) and (d)(2) shall be applied as if such subsections referred to the modification under this subsection (in lieu of the agreement under subsection (a)),

[(B) subsection (d)(3)(B) shall not apply so long as there is in effect a modification entered into by the State under this subsection, and

[(C) notwithstanding subsection (e), in the case of any termination described in such subsection, such individual may terminate his enrollment under this part by the filing of a notice, before the close of the third month which begins after the date of such termination, that he no longer wishes to participate in the insurance program established by this part (and in such a case, the termination of his coverage period under this part shall take effect as of the close of such third month).

[(h)(1) The Secretary shall, at the request of a State made before January 1, 1970, enter into a modification of an agreement entered into with such State pursuant to subsection (a) under which the coverage group described in subsection (b) and specified in such agreement is broadened to include individuals who are eligible to receive medical assistance under the plan of such State approved under title XIX.

[(2) For purposes of this section, an individual shall be treated as eligible to receive medical assistance under the plan of the State approved under title XIX if, for the month in which the modification is entered into under this subsection or for any month thereafter, he has been determined to be eligible to receive medical assistance under such plan. In the case of any individual who would (but for this subsection) be excluded from the agreement, subsections (c) and (d)(2) shall be applied as if they referred to the modification under this subsection (in lieu of the agreement under subsection (a)), and subsection (d)(2)(C) shall be applied by substituting "second month following the first month" for "first month" ]

### Appropriations to Cover Government Contributions and Contingency Reserve

**Sec. 1844.** (a) There are authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, to the Federal Supplementary Medical Insurance Trust Fund—

(1) (A) a Government contribution equal to the aggregate premiums payable for enrollees age 65 and over under this part and deposited in the Trust Fund, [and] multiplied by the ratio of—

(i) twice the dollar amount of an actuarially adequate rate per enrollee age 65 and over, as determined under section 1839(c)(1) for the month in which such aggregate premiums are deposited in the Trust Fund, minus the dollar amount of the premium per enrollee for such month, to

(ii) the dollar amount of the premium per enrollee for such month, plus

(B) a Government contribution equal to the aggregate premiums payable for enrollees under age 65 under this part, and deposited in the Trust Fund, multiplied by the ratio of—

(i) twice the dollar amount of an actuarially adequate rate per enrollee under age 65 as determined under section 1839(c)(4) for the month in which such aggregate premiums are deposited in the Trust Fund, minus the dollar amount of the premium per enrollee for such month, to

(ii) the dollar amount of the premium per enrollee for such month.<sup>1</sup>

(2) such sums as the Secretary deems necessary to place the Trust Fund, at the end of any fiscal year occurring after June 30, 1967, in the same position in which it would have been at the end of such fiscal year if (A) a Government contribution representing the excess of the premiums deposited in the Trust Fund during the fiscal year ending June 30, 1967, over the Government contribution actually appropriated to the Trust Fund during such fiscal year had been appropriated to it on June 30, 1967, and (B) the Government contribution for premiums deposited in the Trust Fund after June 30, 1967, had been appropriated to it when such premiums were deposited.

(b) In order to assure prompt payment of benefits provided under this part and the administrative expenses thereunder during the early months of the program established by this part, and to provide a contingency reserve, there is also authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, to remain available through the calendar year 1969 for repayable advances (without interest) to the Trust Fund, an amount equal to \$18 multiplied by the number of individuals (as estimated by the Secretary) who could be covered in July 1966 by the insurance program established by this part if they had theretofore enrolled under this part.

<sup>1</sup> Effective with respect to months after June 1972.



## Part C—Miscellaneous Provisions

### Definition of Services, Institutions, etc.

Sec. 1861. For purposes of this title—

#### Spell of Illness

(a) The term “spell of illness” with respect to any individual means a period of consecutive days—

(1) beginning with the first day (not included in a previous spell of illness) (A) on which such individual is furnished inpatient hospital services or extended care services, and (B) which occurs in a month for which he is entitled to benefits under part A, and

(2) ending with the close of the first period of 60 consecutive days thereafter on each of which he is neither an inpatient of a hospital nor an inpatient of an extended care facility.

#### Inpatient Hospital Services

(b) The term “inpatient hospital services” means the following items and services furnished to an inpatient of a hospital and (except as provided in paragraph (3)) by the hospital—

(1) bed and board;

(2) such nursing services and other related services, such use of hospital facilities, and such medical social services as are ordinarily furnished by the hospital for the care and treatment of inpatients, and such drugs, biologicals, supplies, appliances, and equipment, for use in the hospital, as are ordinarily furnished by such hospital for the care and treatment of inpatients; and

(3) such other diagnostic or therapeutic items or services, furnished by the hospital or by others under arrangements with them made by the hospital, as are ordinarily furnished to inpatients either by such hospital or by others under such arrangements;

excluding, however—

(4) medical or surgical services provided by a physician, resident, or intern; and

(5) the services of a private-duty nurse or other private-duty attendant.

Paragraph (4) shall not apply to services provided in the hospital [by an intern or a resident-in-training under a teaching program approved by the Council on Medical Education of the American Medical Association or, in the case of an osteopathic hospital, approved by the Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association, or, in the case of services in a hospital or osteopathic hospital by an intern or resident-in-training in the field of dentistry, approved by the Council on Dental Education of the American Dental Association.] by—

<sup>1</sup>(6) *an intern or a resident-in-training under a teaching program approved by the Council on Medical Education of the American Medical Association or, in the case of an osteopathic hospital, approved by the Committee on Hospitals of the Bureau of Professional*

<sup>1</sup> Applies to accounting periods after June 30, 1971.

*Education of the American Osteopathic Association, or, in the case of services in a hospital or osteopathic hospital by an intern or resident-in-training in the field of dentistry, approved by the Council on Dental Education of the American Dental Association; or*

*(7) a physician where the hospital has a teaching program approved as specified in paragraph (6), unless (A) such inpatient is a private patient (as defined in regulations), or (B) the hospital establishes that during the two-year period ending December 31, 1967, and each year thereafter all inpatients have been regularly billed by the hospital for services rendered by physicians and reasonable efforts have been made to collect in full from all patients and payment of reasonable charges (including applicable deductibles and coinsurance) has been regularly collected in full or in substantial part from at least 50 percent of all inpatients.*

#### **Inpatient Psychiatric Hospital Services**

(c) The term "inpatient psychiatric hospital services" means inpatient hospital services furnished to an inpatient of a psychiatric hospital.

#### **Inpatient Tuberculosis Hospital Services**

(d) The term "inpatient tuberculosis hospital services" means inpatient hospital services furnished to an inpatient of a tuberculosis hospital.

#### **Hospital**

(e) The term "hospital" (except for purposes of sections 1814(d), 1814(f),<sup>1</sup> and 1835(b), subsection (a)(2) of this section, paragraph (7) of this subsection, and subsections (i) and (n) of this section) means an institution which—

(1) is primarily engaged in providing, by or under the supervision of physicians, to inpatients (A) diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or (B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons;

(2) maintains clinical records on all patients;

(3) has bylaws in effect with respect to its staff or physicians;

(4) has a requirement that every patient must be under the care of a physician;

(5) provides 24-hour nursing service rendered or supervised by a registered professional nurse, and has a licensed practical nurse or registered professional nurse on duty at all times except that until January 1, 1976, the Secretary is authorized to waive the requirement of this paragraph for any one-year period with respect to any institution, insofar as such requirement relates to the provision of twenty-four-hour nursing service rendered or supervised by a registered professional nurse (except that in any event a registered professional nurse must be present on the premises to render or supervise the nursing service provided, during at least the regular daytime shift), where immediately preceding such one-year period he finds that—

<sup>1</sup> Applies to services furnished with respect to admissions occurring after Dec. 31, 1971.

(A) such institution is located in a rural area and the supply of hospital services in such area is not sufficient to meet the needs of individuals residing therein,

(B) the failure of such institution to qualify as a hospital would seriously reduce the availability of such services to such individuals, and

(C) such institution has made and continues to make a good faith effort to comply with this paragraph, but such compliance is impeded by the lack of qualified nursing personnel in such area;

(6) has in effect a hospital utilization review plan which meets the requirements of subsection (k);

(7) in the case of an institution in any State in which State or applicable local law provides for the licensing of hospitals, (A) is licensed pursuant to such law or (B) is approved, by the agency of such State or locality responsible for licensing hospitals, as meeting the standards established for such licensing; [and]

(8) has in effect an overall plan and budget that meets the requirements of subsection (z);<sup>1</sup> and

(9) [(8)] meets such other requirements as the Secretary finds necessary in the interest of the health and safety of individuals who are furnished services in the institution, except that such other requirements may not be higher than the comparable requirements prescribed for the accreditation of hospitals by the Joint Commission on Accreditation of Hospitals (subject to the second sentence of section 1863).

For purposes of subsection (a)(2), such term includes any institution which meets the requirements of paragraph (1) of this subsection. For purposes of sections 1814(d) and 1835(b) (including determination of whether an individual received inpatient hospital services or diagnostic services for purposes of such sections), section 1814(f)(2),<sup>2</sup> and subsections (i) and (n) of this section, such term includes any institution which (i) meets the requirements of paragraphs (5) and (7) of this subsection, (ii) is not primarily engaged in providing the services described in section 1861(j)(1)(A) and (iii) is primarily engaged in providing, by or under the supervision of individuals referred to in paragraph (1) of section 1861(r) to inpatients diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. *For purposes of section 1814(f)(1), such term includes an institution which (i) is a hospital for purposes of sections 1814(d), 1814(f)(2), and 1835(b) and (ii) is accredited by the Joint Commission on Accreditation of Hospitals, or is accredited by or approved by a program of the country in which such institution is located if the Secretary finds the accreditation or comparable approval standards of such program to be essentially equivalent to those of the Joint Commission on Accreditation of Hospitals.*<sup>3</sup>

Notwithstanding the preceding provisions of this subsection, such term shall not, except for purposes of subsection (a)(2), include any institution which is primarily for the care and treatment of mental diseases or tuberculosis unless it is a tuberculosis hospital (as defined

<sup>1</sup> Applies to any provider of services for fiscal years (of such provider) beginning after the fifth month following the month of enactment.

<sup>2</sup> Applies to services furnished with respect to admissions occurring after Dec. 31, 1971.

in subsection (g)) or unless it is a psychiatric hospital (as defined in subsection (f)). The term "hospital" also includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts, but only with respect to items and services ordinarily furnished by such institution to in-patients, and payment may be made with respect to services provided by or in such an institution only to such extent and under such conditions, limitations, and requirements (in addition to or in lieu of the conditions, limitations, and requirements otherwise applicable) as may be provided in regulations. For provisions deeming certain requirements of this subsection to be met in the case of accredited institutions, see section 1865.

#### Psychiatric Hospital

- (f) The term "psychiatric hospital" means an institution which—
- (1) is primarily engaged in providing, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons;
  - (2) satisfies the requirements of paragraphs (3) through [(8)] (9)<sup>1</sup> of subsection (e);
  - (3) maintains clinical records on all patients and maintains such records as the Secretary finds to be necessary to determine the degree and intensity of the treatment provided to individuals entitled to hospital insurance benefits under part A;
  - (4) meets such staffing requirements as the Secretary finds necessary for the institution to carry out an active program of treatment for individuals who are furnished services in the institution; and
  - (5) is accredited by the Joint Commission on Accreditation of Hospitals.

In the case of an institution which satisfies paragraphs (1) and (2) of the preceding sentence and which contains a distinct part which also satisfies paragraphs (3) and (4) of such sentence, such distinct part shall be considered to be a "psychiatric hospital" if the institution is accredited by the Joint Commission on Accreditation of Hospitals or if such distinct part meets requirements equivalent to such accreditation requirements as determined by the Secretary.

#### Tuberculosis Hospital

- (g) The term "tuberculosis hospital" means an institution which—
- (1) is primarily engaged in providing, by or under the supervision of a physician, medical services for the diagnosis and treatment of tuberculosis;
  - (2) satisfies the requirements of paragraphs (3) through [(8)] (9)<sup>1</sup> of subsection (e);
  - (3) maintains clinical records on all patients and maintains such records as the Secretary finds to be necessary to determine the degree and intensity of the treatment provided to individuals covered by the insurance program established by part A;

<sup>1</sup> Applies to any provider of services for fiscal years (of such provider) beginning after the fifth month following the month of enactment.

(4) meets such staffing requirements as the Secretary finds necessary for the institution to carry out an active program of treatment for individuals who are furnished services in the institution; and

(5) is accredited by the Joint Commission on Accreditation of Hospitals.

In the case of an institution which satisfies paragraphs (1) and (2) of the preceding sentence and which contains a distinct part which also satisfies paragraphs (3) and (4) of such sentence, such distinct part shall be considered to be a "tuberculosis hospital" if the institution is accredited by the Joint Commission on Accreditation of Hospitals or if such distinct part meets requirements equivalent to such accreditation requirements as determined by the Secretary.

#### **Extended Care Services**

(h) The term "extended care services" means the following items and services furnished to an inpatient of an extended care facility and (except as provided in paragraphs (3) and (6)) by such extended care facility—

(1) nursing care provided by or under the supervision of a registered professional nurse;

(2) bed and board in connection with the furnishing of such nursing care;

(3) physical, occupational, or speech therapy furnished by the extended care facility or by others under arrangements with them made by the facility;

(4) medical social services;

(5) such drugs, biologicals, supplies, appliances, and equipment, furnished for use in the extended care facility as are ordinarily furnished by such facility for the care and treatment of inpatients;

(6) medical services provided by an intern or resident-in-training of a hospital with which the facility has in effect a transfer agreement (meeting the requirements of subsection (1)), under a teaching program of such hospital approved as provided in the last sentence of subsection (b), and other diagnostic or therapeutic services provided by a hospital with which the facility has such an agreement in effect; and

(7) such other services necessary to the health of the patients as are generally provided by extended care facilities;

excluding, however, any item or service if it would not be included under subsection (b) if furnished to an inpatient of a hospital.

#### **Post-Hospital Extended Care Services**

(i) The term "post-hospital extended care services" means extended care services furnished an individual after transfer from a hospital in which he was an inpatient for not less than 3 consecutive days before his discharge from the hospital in connection with such transfer. For purposes of the preceding sentence, items and services shall be deemed to have been furnished to an individual after transfer from a hospital, and he shall be deemed to have been an inpatient in the hospital immediately before transfer therefrom, if he is admitted to the extended

care facility within 14 days after discharge from such hospital; and an individual shall be deemed not to have been discharged from an extended care facility if, within 14 days after discharge therefrom, he is admitted to such facility or any other extended care facility.

#### Extended Care Facility

(j) The term "extended care facility" means (except for purposes of subsection (a)(2)) an institution (or a distinct part of an institution) which has in effect a transfer agreement (meeting the requirements of subsection (1)) with one or more hospitals having agreements in effect under section 1866 and which—

(1) is primarily engaged in providing to inpatients (A) skilled nursing care and related services for patients who require medical or nursing care, or (B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons;

(2) has policies, which are developed with the advice of (and with provision of review of such policies from time to time by) a group of professional personnel, including one or more physicians and one or more registered professional nurses, to govern the skilled nursing care and related medical or other services it provides;

(3) has a physician, a registered professional nurse, or a medical staff responsible for the execution of such policies;

(4)(A) has a requirement that the health care of every patient must be under the supervision of a physician, and (B) provides for having a physician available to furnish necessary medical care in case of emergency;

(5) maintains clinical records on all patients;

(6) provides 24-hour nursing service which is sufficient to meet nursing needs in accordance with the policies developed as provided in paragraph (2), and has at least one registered professional nurse employed full time;

(7) provides appropriate methods and procedures for the dispensing and administering of drugs and biologicals;

(8) has in effect a utilization review plan which meets the requirements of subsection (k);

(9) in the case of an institution in any State in which State or applicable local law provides for the licensing of institutions of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State or locality responsible for licensing institutions of this nature, as meeting the standards established for such licensing; **[and]**

(10) *has in effect an overall plan and budget that meets the requirements of subsection (e); and*<sup>1</sup>

**[10]**(11) meets such other conditions relating to the health and safety of individuals who are furnished services in such institution or relating to the physical facilities thereof as the Secretary may find necessary (subject to the second sentence of section 1863), *except that the Secretary shall not require as a condition of participation that medical social services be furnished in any such institution; except that such term shall not (other than for purposes of subsection (a)(2)) include any institution which is primarily for the care*

<sup>1</sup> Applies to any provider of services for fiscal years (of such provider) beginning after the fifth month following the month of enactment.

and treatment of mental diseases or tuberculosis. For purposes of subsection (a)(2), such term includes any institution which meets the requirements of paragraph (1) of this subsection. The term "extended care facility" also includes an institution described in paragraph (1) of subsection (y), to the extent and subject to the limitations provided in such subsection.

#### Utilization Review

(k) A utilization review plan of a hospital or extended care facility shall be considered sufficient if it is applicable to services furnished by the institution to individuals entitled to insurance benefits under this title and if it provides—

(1) for the review, on a sample or other basis, of admissions to the institution, the duration of stays therein, and the professional services (including drugs and biologicals) furnished, (A) with respect to the medical necessity of the services, and (B) for the purpose of promoting the most efficient use of available health facilities and services;

(2) for such review to be made by either (A) a staff committee of the institution composed of two or more physicians, with or without participation of other professional personnel, or (B) a group outside the institution which is similarly composed and (i) which is established by the local medical society and some or all of the hospitals and extended care facilities in the locality, or (ii) if (and for as long as) there has not been established such a group which serves such institution, which is established in such other manner as may be approved by the Secretary;

(3) for such review, in each case of inpatient hospital services or extended care services furnished to such an individual during a continuous period of extended duration, as of such days of such period (which may differ for different classes of cases) as may be specified in regulations, with such review to be made as promptly as possible, after each day so specified, and in no event later than one week following such day; and

(4) for prompt notification to the institution, the individual, and his attending physician of any finding (made after opportunity for consultation to such attending physician) by the physician members of such committee or group that any further stay in the institution is not medically necessary.

The review committee must be composed as provided in clause (B) of paragraph (2) rather than as provided in clause (A) of such paragraph in the case of any hospital or extended care facility where, because of the small size of the institution, or (in the case of an extended care facility) because of lack of an organized medical staff, or for such other reason or reasons as may be included in regulations, it is impracticable for the institution to have a properly functioning staff committee for the purposes of this subsection.

#### Agreements for Transfer Between Extended Care Facilities and Hospitals

(l) A hospital and an extended care facility shall be considered to have a transfer agreement in effect if, by reason of a written agreement between them or (in case the two institutions are under common

control) by reason of a written undertaking by the person or body which controls them, there is reasonable assurance that—

(1) transfer of patients will be effected between the hospital and the extended care facility whenever such transfer is medically appropriate as determined by the attending physician; and

(2) there will be interchange of medical and other information necessary or useful in the care and treatment of individuals transferred between the institutions; or in determining whether such individuals can be adequately cared for otherwise than in either of such institutions.

Any extended care facility which does not have such an agreement in effect, but which is found by a State agency (of the State in which such facility is situated) with which an agreement under section 1864 is in effect (or, in the case of a State in which no such agency has an agreement under section 1864, by the Secretary) to have attempted in good faith to enter into such an agreement with a hospital sufficiently close to the facility to make feasible the transfer between them of patients and the information referred to in paragraph (2), shall be considered to have such an agreement in effect if and for so long as such agency (or the Secretary, as the case may be) finds that to do so is in the public interest and essential to assuring extended care services for persons in the community who are eligible for payments with respect to such services under this title.

#### Home Health Services

(m) The term "home health services" means the following items and services furnished to an individual, who is under the care of a physician, by a home health agency or by others under arrangements with them made by such agency, under a plan (for furnishing such items and services to such individual) established and periodically reviewed by a physician, which items and services are, except as provided in paragraph (7), provided on a visiting basis in a place of residence used as such individual's home—

(1) part-time or intermittent nursing care provided by or under the supervision of a registered professional nurse;

(2) physical, occupational, or speech therapy;

(3) medical social services under the direction of a physician;

(4) to the extent permitted in regulations, part-time or intermittent services of a home health aide;

(5) medical supplies (other than drugs and biologicals), and the use of medical appliances, while under such a plan;

(6) in the case of a home health agency which is affiliated or under common control with a hospital, medical services provided by an intern or resident-in-training of such hospital, under a teaching program of such hospital approved as provided in the last sentence of subsection (b); and

(7) any of the foregoing items and services which are provided on an outpatient basis, under arrangements made by the home health agency, at a hospital or extended care facility, or at a rehabilitation center which meets such standards as may be prescribed in regulations, and—

(A) the furnishing of which involves the use of equipment of such a nature that the items and services cannot readily be



made available to the individual in such place of residence, or (B) which are furnished at such facility while he is there to receive any such item or service described in clause (A), but not including transportation of the individual in connection with any such item or service; excluding, however, any item or service if it would not be included under subsection (b) if furnished to an inpatient of a hospital.

#### Post-Hospital Home Health Services

(n) The term "post-hospital home health services" means home health services furnished an individual within one year after his most recent discharge from a hospital of which he was an inpatient for not less than 3 consecutive days or (if later) within one year after his most recent discharge from an extended care facility of which he was an inpatient entitled to payment under part A for post-hospital extended care services, but only if the plan covering the home health services (as described in subsection (m)) is established within 14 days after his discharge from such hospital or extended care facility.

#### Home Health Agency

(o) The term "home health agency" means a public agency or private organization, or a subdivision of such an agency or organization, which—

(1) is primarily engaged in providing skilled nursing services and other therapeutic services;

(2) has policies, established by a group of professional personnel (associated with the agency or organization), including one or more physicians and one or more registered professional nurses, to govern the services (referred to in paragraph (1)) which it provides, and provides for supervision of such services by a physician or registered professional nurse;

(3) maintains clinical records on all patients;

(4) in the case of an agency or organization in any State in which State or applicable local law provides for the licensing of agencies or organizations of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State or locality responsible for licensing agencies or organizations of this nature, as meeting the standards established for such licensing;

**[and]**

(5) *has in effect an overall plan and budget that meets the requirements of subsection (2); and*<sup>1</sup>

**[(5)]** (6) meets such other conditions of participation as the Secretary may find necessary in the interest of the health and safety of individuals who are furnished services by such agency or organization;

except that such term shall not include a private organization which is not a nonprofit organization exempt from Federal income taxation under section 501 of the Internal Revenue Code of 1954 (or a subdivision of such organization) unless it is licensed pursuant to State law and it meets such additional standards and requirements as may be

<sup>1</sup> Applies to any provider of services for fiscal years (of such provider) beginning after the fifth month following the month of enactment.

prescribed in regulations; and except that for purposes of part A such term shall not include any agency or organization which is primarily for the care and treatment of mental diseases.

#### Outpatient Physical Therapy Services

(p) The term "outpatient physical therapy services" means physical therapy services furnished by a provider of services, a clinic, rehabilitation agency, or a public health agency, or by others under an arrangement with, and under the supervision of, such provider, clinic, rehabilitation agency, or public health agency to an individual as an outpatient—

(1) who is under the care of a physician (as defined in section 1861(r)(1)), and

(2) with respect to whom a plan prescribing the type, amount, and duration of physical therapy services that are to be furnished such individual has been established, and is periodically reviewed, by a physician (as so defined);

excluding, however—

(3) any item or service if it would not be included under subsection (b) if furnished to an inpatient of a hospital; and

(4) any such service—

(A) if furnished by a clinic or rehabilitation agency, or by others under arrangements with such clinic or agency, unless such clinic or rehabilitation agency—

(i) provides an adequate program of physical therapy services for outpatients and has the facilities and personnel required for such program or required for the supervision of such a program, in accordance with such requirements as the Secretary may specify,

(ii) has policies, established by a group of professional personnel, including one or more physicians (associated with the clinic or rehabilitation agency) and one or more qualified physical therapists, to govern the services (referred to in clause (i)) it provides,

(iii) maintains clinical records on all patients,

(iv) if such clinic or agency is situated in a State in which State or applicable local law provides for the licensing of institutions of this nature, (I) is licensed pursuant to such law, or (II) is approved by the agency of such State or locality responsible for licensing institutions of this nature, as meeting the standards established for such licensing; and

(v) meets such other conditions relating to the health and safety of individuals who are furnished services by such clinic or agency on an outpatient basis, as the Secretary may find necessary, or

(B) if furnished by a public health agency, unless such agency meets such other conditions relating to health and safety of individuals who are furnished services by such agency on an outpatient basis, as the Secretary may find necessary.

*The term "outpatient physical therapy services" also includes physical therapy services furnished an individual by a physical therapist (in his*

office or in such individual's home) who meets licensing and other standards prescribed by the Secretary in regulations, otherwise than under an arrangement with and under the supervision of a provider of services, clinic, rehabilitation agency, or public health agency, if the furnishing of such services meets such conditions relating to health and safety as the Secretary may find necessary.<sup>1</sup> In addition, such term includes physical therapy services which meet the requirements of the first sentence of this subsection except that they are furnished to an individual as an inpatient of a hospital or extended care facility.<sup>2</sup>

#### Physicians' Services

(q) The term "physicians' services" means professional services performed by physicians, including surgery, consultation, and home, office, and institutional calls [(but not including services described in the last sentence of subsection (b))] (but not including services described in subsection (b)(6)).<sup>3</sup>

#### Physician

(r) The term "physician", when used in connection with the performance of any function or action, means (1) a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he performs such function or action (including a physician within the meaning of section 1101(a)(7)), (2) a doctor of dentistry or of dental or oral surgery who is legally authorized to practice dentistry by the State in which he performs such function but only with respect to (A) surgery related to the jaw or any structure contiguous to the jaw or (B) the reduction of any fracture of the jaw or any facial bone, or (C) the certification required by section 1814(a)(2)(E) of this Act,<sup>4</sup> [or] (3) except for the purposes of section 1814(a), section 1835, and subsections (j), (k), (m), and (o) of this section, a doctor of podiatry or surgical chiropody, but (unless clause (1) of this subsection also applies to him) only with respect to functions which he is legally authorized to perform as such by the State in which he performs them, or (4) a doctor of optometry who is legally authorized to practice optometry by the State in which he performs such function, but only with respect to establishing the necessity for prosthetic lenses.<sup>5</sup> For the purposes of section 1862(a)(4) and subject to the limitations and conditions provided in the previous sentence, such term includes a doctor of one of the arts, specified in such previous sentence, legally authorized to practice such art in the country in which the inpatient hospital services (referred to in such section 1862(a)(4)) are furnished.<sup>6</sup>

#### Medical and Other Health Services

(s) The term "medical and other health services" means any of the following items or services;

- (1) physicians' services;
- (2) (A) services and supplies (including drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered) furnished as an incident to a physician's professional service, of kinds which are commonly furnished in

<sup>1</sup> Applies to services furnished on or after Jan. 1, 1972.

<sup>2</sup> Applies to services furnished on or after the date of enactment.

<sup>3</sup> Applies to accounting periods beginning after June 30, 1971.

<sup>4</sup> Applies to admissions occurring after the second month following the month of enactment.

<sup>5</sup> Applies only with respect to services performed on or after the date of enactment.

<sup>6</sup> Applies to services furnished with respect to admissions occurring after Dec. 31, 1971.

physicians' offices and are commonly either rendered without charge or included in the physicians' bills;

(B) hospital services (including drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered) incident to physicians' services rendered to outpatients;

(C) diagnostic services which are—

(i) furnished to an individual as an outpatient by a hospital or by others under arrangements with them made by a hospital, and

(ii) ordinarily furnished by such hospital (or by others under such arrangements) to its outpatients for the purpose of diagnostic study; and

(D) outpatient physical therapy services;

(3) diagnostic X-ray tests (including tests under the supervision of a physician, furnished in a place of residence used as the patient's home, if the performance of such tests meets such conditions relating to health and safety as the Secretary may find necessary), diagnostic laboratory tests, and other diagnostic tests;

(4) X-ray, radium, and radioactive isotope therapy, including materials and services of technicians;

(5) surgical dressings, and splints, casts, and other devices used for reduction of fractures and dislocations;

(6) durable medical equipment, including iron lungs, oxygen tents, hospital beds, and wheelchairs used in the patient's home (including an institution used as his home other than an institution that meets the requirements of subsection (e)(1) or (j)(1) of this section), whether furnished on a rental basis or purchased;

(7) ambulance service where the use of other methods of transportation is contraindicated by the individual's condition, but only to the extent provided in regulations;

(8) prosthetic devices (other than dental) which replace all or part of an internal body organ (*including colostomy bags and supplies directly related to colostomy care*)<sup>1</sup>, including replacement of such devices; and

(9) leg, arm, back, and neck braces, *ptosis bars*<sup>1</sup>, and artificial legs, arms, and eyes, including replacements if required because of a change in the patient's physical condition.

No diagnostic tests performed in any laboratory which is independent of a physician's office or a hospital (which, for purposes of this sentence, means an institution considered a hospital for purposes of section 1814(d)) shall be included within paragraph (3) unless such laboratory—

(10) if situated in any State in which State or applicable local law provides for licensing of establishments of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State or locality responsible for licensing establishments of this nature, as meeting the standards established for such licensing; and

<sup>1</sup> Applies only with respect to items furnished on or after the date of enactment.

(11) meets such other conditions relating to the health and safety of individuals with respect to whom such tests are performed as the Secretary may find necessary.

There shall be excluded from the diagnostic services specified in paragraph (2)(C) any item or service (except services referred to in paragraph (1)) which—

(12) would not be included under subsection (b) if it were furnished to an inpatient of a hospital; or

(13) is furnished under arrangements referred to in such paragraph (2)(C) unless furnished in the hospital or in other facilities operated by or under the supervision of the hospital or its organized medical staff.

None of the items and services referred to in the preceding paragraphs (other than paragraphs (1) and (2)(A)) of this subsection which are furnished to a patient of an institution which meets the definition of a hospital for purposes of section 1814(d) shall be included unless such other conditions are met as the Secretary may find necessary relating to health and safety of individuals with respect to whom such items and services are furnished.

#### Drugs and Biologicals

(t) The term “drugs” and the term “biologicals”, except for purposes of subsection (m)(5) of this section, include only such drugs and biologicals, respectively, as are included (or approved for inclusion) in the United States Pharmacopoeia, the National Formulary, or the United States Homeopathic Pharmacopoeia, or in New Drugs or Accepted Dental Remedies (except for any drugs and biologicals unfavorably evaluated therein), or as are approved by the pharmacy and drug therapeutics committee (or equivalent committee) of the medical staff of the hospital furnishing such drugs and biologicals for use in such hospitals.

#### Provider of Services

(u) The term “provider of services” means a hospital, extended care facility, or home health agency, or, for purposes of section 1814(g) and section 1835(e), a fund.<sup>1</sup>

#### Reasonable Cost

(v)(1)(A) The reasonable cost of any services shall be *the cost actually incurred, excluding therefrom any part of incurred cost found to be unnecessary in the efficient delivery of needed health services, and shall be*<sup>2</sup> determined in accordance with regulations establishing the method or methods to be used, and the items to be included, in determining such costs for various types or classes of institutions, agencies, and services; except that in any case to which paragraph (2) or (3) applies, the amount of the payment determined under such paragraph with respect to the services involved shall be considered the reasonable cost of such services; In prescribing the regulations referred to in the preceding

<sup>1</sup> Applies to accounting periods beginning after June 30, 1971.

<sup>2</sup> Effective with respect to accounting periods beginning after June 30, 1972.

sentence, the Secretary shall consider, among other things, the principles generally applied by national organizations or established prepayment organizations (which have developed such principles) in computing the amount of payment, to be made by persons other than the recipients of services, to providers of services on account of services furnished to such recipients by such providers. Such regulations may provide for determination of the costs of services on a per diem, per unit, per capita, or other basis, may provide for using different methods in different circumstances, may provide for the use of estimates of costs of particular items or services *may provide for the establishment of limits on the direct or indirect overall incurred costs or incurred costs of specific items or services or groups of items or services to be recognized as reasonable based on estimates of the costs necessary in the efficient delivery of needed health services to individuals covered by the insurance programs established under this title*<sup>1</sup>, and may provide for the use of charges or a percentage of charges where this method reasonably reflects the costs. Such regulations shall [(A) take] (i) take into account both direct and indirect costs of providers of services (*excluding therefrom any such costs, including standby costs, which are determined in accordance with regulations to be unnecessary in the efficient delivery of services covered by the insurance programs established under this title*)<sup>1</sup> in order that, under the methods of determining costs, the [costs with respect] *necessary costs of efficiently delivering covered services*<sup>1</sup> to individuals covered by the insurance programs established by this title will not be borne by individuals not so covered, and the costs with respect to individuals not so covered will not be borne by such insurance programs, and [(B) provide] (ii) provide for the making of suitable retroactive corrective adjustments where, for a provider of services for any fiscal period, the aggregate reimbursement produced by the methods of determining costs proves to be either inadequate or excessive.

(B) Such regulations in the case of extended care services furnished by proprietary facilities shall include provision for specific recognition of a reasonable return on equity capital, including necessary working capital, invested in the facility and used in the furnishing of such services, in lieu of other allowances to the extent that they reflect similar items. The rate of return recognized pursuant to the preceding sentence for determining the reasonable cost of any services furnished in any fiscal period shall not exceed one and one-half times the average of the rates of interest, for each of the months any part of which is included in such fiscal period, on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.

(C) *Where a hospital has an arrangement with a medical school under which the faculty of such school provides services at such hospital, an amount not in excess of the reasonable cost of such services to the medical school shall be included in determining the reasonable cost to the hospital of furnishing services—*

(i) *for which payment may be made under part A, but only if*

(I) *payment for such services as furnished under such arrangement would be made under part A to the hospital had such services been furnished by the hospital, and*

<sup>1</sup> Effective with respect to accounting periods beginning after June 30, 1972.

(II) such hospital pays to the medical school at least the reasonable cost of such services to the medical school, or

(ii) for which payment may be made under part B, but only if such hospital pays to the medical school at least the reasonable cost of such services to the medical school.<sup>1</sup>

(D) Where (i) physicians furnish services which are either inpatient hospital services (including services in conjunction with the teaching programs of such hospital) by reason of paragraph (7) of subsection (b) or for which entitlement exists by reason of clause (II) of section 1832(a) (2)(B) (i) and (ii) such hospital (or medical school under arrangement with such hospital) incurs no actual cost in the furnishing of such services, the reasonable cost of such services shall (under regulations of the Secretary) be deemed to be the cost such hospital or medical school would have incurred had it paid a salary to such physicians rendering such services approximately equivalent to the average salary paid to all physicians employed by such hospital (or if such employment does not exist, or is minimal in such hospital, by similar hospitals in a geographic area of sufficient size to assure reasonable inclusion of sufficient physicians in development of such average salary).<sup>1</sup>

(2)(A) If the bed and board furnished as part of inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services is in accommodations more expensive than semi-private accommodations, the amount taken into account for purposes of payment under this title with respect to such services may not exceed an amount equal to the reasonable cost of such services if furnished in such semi-private accommodations unless the more expensive accommodations were required for medical reasons.

(B) Where a provider of services which has an agreement in effect under this title furnishes to an individual items or services which are in excess of or more expensive than the items or services with respect to which payment may be made under part A or part B, as the case may be, the Secretary shall take into account for purposes of payment to such provider of services only the equivalent of the reasonable cost of the items or services with respect to which such payment may be made.

(3) If the bed and board furnished as part of inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services is in accommodations other than, but not more expensive than, semi-private accommodations and the use of such other accommodations rather than semi-private accommodations was neither at the request of the patient nor for a reason which the Secretary determines is consistent with the purposes of this title, the amount of the payment with respect to such bed and board under part A shall be the reasonable cost of such bed and board furnished in semi-private accommodations (determined pursuant to paragraph (1)) minus the difference between the charge customarily made by the hospital or extended care facility for bed and board in semi-private accommodations and the charge customarily made by it for bed and board in the accommodations furnished.

<sup>1</sup> Applies to accounting periods beginning after June 30, 1971.

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(4) *If a provider of services furnishes items or services to an individual which are in excess of or more expensive than the items or services determined to be necessary in the efficient delivery of needed health services and charges are imposed for such more expensive items or services under the authority granted in section 1866(a)(2)(B)(iv), the amount of payment with respect to such items or services otherwise due such provider in any fiscal period shall be reduced to the extent that such payment plus such charges exceed the cost actually incurred for such items or services in the fiscal period in which such charges are imposed.*<sup>1</sup>

(5) *Where physical therapy services, occupational therapy services, speech therapy services, or other therapy services or services of other health-related personnel (other than physicians) are furnished by a provider of services, or other organization specified in the first sentence of section 1861(p), or by others under an arrangement with such a provider or other organization, the amount included in any payment to such provider or organization under this title as the reasonable cost of such services shall not exceed an amount equal to the salary which would reasonably have been paid for such services to the person performing them if they had been performed in an employment relationship with such provider or organization (rather than under such arrangement) plus the cost of such other expenses incurred by such person not working as an employee, as the Secretary may in regulations determine to be appropriate.*<sup>2</sup>

(6) **[4]** For purposes of this subsection, the term "semi-private accommodations" means two-bed, three-bed, or four-bed accommodations.

(7) *For limitation on Federal participation for capital expenditures which are out of conformity with a comprehensive plan of a State or areawide planning agency, see section 1122.*

#### Arrangements for Certain Services

(w) The term "arrangements" is limited to arrangements under which receipt of payment by the hospital, extended care facility, or home health agency (whether in its own right or as agent), with respect to services for which an individual is entitled to have payment made under this title, discharges the liability of such individual or any other person to pay for the services.

#### State and United States

(x) The terms "State" and "United States" have the meaning given to them by subsections (h) and (i), respectively, of section 210.

#### Post-Hospital Extended Care in Christian Science Extended Care Facilities

(y)(1) The term "extended care facility" also includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts, but only (except for purposes of subsection (a)(2)) with respect to items and services ordinarily furnished by such an institution to inpatients, and payment

<sup>1</sup> Effective with respect to accounting periods beginning after June 30, 1972.

<sup>2</sup> Effective with respect to accounting periods beginning on or after Jan. 1, 1972.



may be made with respect to services provided by or in such an institution only to such extent and under such conditions, limitations, and requirements (in addition to or in lieu of the conditions, limitations, and requirements otherwise applicable) as may be provided in regulations.

(2) *Notwithstanding* any other provision of this title, payment under part A may not be made for services furnished an individual in an extended care facility to which paragraph (1) applies unless such individual elects, in accordance with regulations, for a spell of illness to have such services treated as post-hospital extended care services for purposes of such part; and payment under part A may not be made for post-hospital extended care services—

(A) furnished an individual during such spell of illness in an extended care facility to which paragraph (1) applies after—

(i) such services have been furnished to him in such a facility for 30 days during such spell, or

(ii) such services have been furnished to him during such spell in an extended care facility to which such paragraph does not apply; or

(B) furnished an individual during such spell of illness in an extended care facility to which paragraph (1) does not apply after such services have been furnished to him during such spell in an extended care facility to which such paragraph applies.

(3) The amount payable under part A for post-hospital extended care services furnished an individual during any spell of illness in an extended care facility to which paragraph (1) applies shall be reduced by a coinsurance amount equal to one-eighth of the inpatient hospital deductible for each day before the 31st day on which he is furnished such services in such a facility during such spell (and the reduction under this paragraph shall be in lieu of any reduction under section 1813(a)(3)).

(4) For purposes of subsection (i), the determination of whether services furnished by or in an institution described in paragraph (1) constitute post-hospital extended care services shall be made in accordance with and subject to such conditions, limitations, and requirements as may be provided in regulations.

#### ***Institutional Planning***<sup>1</sup>

(2) *An overall plan and budget of a hospital, extended care facility, or home health agency shall be considered sufficient if it—*

(1) *provides for an annual operating budget which includes all anticipated income and expenses related to items which would, under generally accepted accounting principles, be considered income and expense items (except that nothing in this paragraph shall require that there be prepared, in connection with any budget, an item-by-item identification of the components of each type of anticipated expenditure or income);*

(2) *provides for a capital expenditures plan for at least a 3-year period (including the year to which the operating budget described in subparagraph (1) is applicable) which includes and identifies in detail the anticipated sources of financing for, and the objectives of, each anticipated expenditure in excess of \$100,000 related to the*

<sup>1</sup> Applies to any provider of services for fiscal years (of such provider) beginning after the fifth month following the month of enactment.

*acquisition of land, the improvement of land, buildings, and equipment, and the replacement, modernization, and expansion of buildings and equipment which would, under generally accepted accounting principles, be considered capital items;*

*(3) provides for review and updating at least annually; and*

*(4) is prepared, under the direction of the governing body of the institution or agency, by a committee consisting of representatives of the governing body, the administrative staff, and the medical staff (if any) of the institution or agency.*

### Exclusions From Coverage

**Sec. 1862.** (a) Notwithstanding any other provision of this title, no payment may be made under part A or part B for any expenses incurred for items or services—

(1) which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member;

(2) for which the individual furnished such items or services has no legal obligation to pay, and which no other person (by reason of such individual's membership in a prepayment plan or otherwise) has a legal obligation to provide or pay for;

(3) which are paid for directly or indirectly by a governmental entity (other than under this Act and other than under a health benefits or insurance plan established for employees of such an entity), except in such cases as the Secretary may specify;

(4) which are not provided within the United States (except for [emergency] inpatient hospital services furnished outside the United States under the conditions described in section 1814(f) and, subject to such conditions, limitations, and requirements as are provided under or pursuant to this title, physicians' services and ambulance services furnished an individual in conjunction with such inpatient hospital services but only for the period during which such inpatient hospital services were furnished),<sup>1</sup>

(5) which are required as a result of war, or of an act of war, occurring after the effective date of such individual's current coverage under such part;

(6) which constitute personal comfort items;

(7) where such expenses are for routine physical checkups, eyeglasses or eye examinations for the purpose of prescribing, fitting, or changing eyeglasses, procedures performed (during the course of any eye examination) to determine the refractive state of the eyes, hearing aids or examinations therefor, or immunizations;

(8) where such expenses are for orthopedic shoes or other supportive devices for the feet;

(9) where such expenses are for custodial care;

(10) where such expenses are for cosmetic surgery or are incurred in connection therewith, except as required for the prompt repair of accidental injury or for improvement of the functioning of a malformed body member;

(11) where such expenses constitute charges imposed by immediate relatives of such individual or members of his household;

<sup>1</sup>Applies to services furnished with respect to admissions occurring after Dec. 31, 1971.

(12) where such expenses are for services in connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth, *except that payment may be made under part A in the case of inpatient hospital services in connection with a dental procedure where the individual suffers from impairments of such severity as to require hospitalization;*<sup>1</sup> or

(13) where such expenses are for—

(A) the treatment of flat foot conditions and the prescription of supportive devices therefor,

(B) the treatment of subluxations of the foot, or

(C) routine foot care (including the cutting or removal of corns, warts, or calluses, the trimming of nails, and other routine hygienic care).

(b) Payment under this title may not be made with respect to any item or service to the extent that payment has been made, or can reasonably be expected to be made (as determined in accordance with regulations), with respect to such item or service, under a workmen's compensation law or plan of the United States or a State. Any payment under this title with respect to any item or service shall be conditioned on reimbursement to the appropriate Trust Fund established by this title when notice or other information is received that payment for such item or service has been made under such a law or plan.

(c) *No payment may be made under this title with respect to any item or service furnished to or on behalf of any individual on or after January 1, 1975, if such item or service is covered under a health benefits plan in which such individual is enrolled under chapter 89 of title 5, United States Code, unless prior to the date on which such item or service is so furnished the Secretary shall have determined and certified that such plan or the Federal employees health benefits program under chapter 89 of such title 5 has been modified so as to assure that—*

(1) *there is available to each Federal employee or annuitant enrolled in such plan, upon or after attaining age 65, in addition to the health benefits plans available before he attains such age, one or more health benefits plans which offer protection supplementing the combined protection provided under parts A and B of this title and one or more health benefits plans which offer protection supplementing the protection provided under part B of this title alone, and*

(2) *the Government or such plan will make available to such Federal employee or annuitant a contribution in an amount at least equal to the contribution which the Government makes toward the health insurance of any employee or annuitant enrolled for high option coverage under the Government-wide plans established under chapter 89 of such title 5, with such contribution being in the form of (A) a contribution toward the supplementary protection referred to in paragraph (1), (B) a payment to or on behalf of such employee or annuitant to offset the cost to him of coverage under parts A and B (or part B alone) of this title, or (C) a combination of such contribution and such payment.*

(d)(1) *No payment may be made under this title with respect to any item or services furnished to an individual by a person where the Secretary determines under this subsection that such person—*

<sup>1</sup> Applies to admissions occurring after the second month following the month of enactment.

(A) has knowingly and willfully made, or caused to be made, any false statement or representation of a material fact for use in an application for payment under this title or for use in determining the right to a payment under this title;

(B) has submitted or caused to be submitted (except in the case of a provider of services), bills or requests for payment under this title containing charges (or in applicable cases requests for payment of costs to such person) for services rendered which the Secretary finds, with the concurrence of the appropriate program review team appointed pursuant to paragraph (4), to be substantially in excess of such person's customary charges (or in applicable cases substantially in excess of such person's costs) for such services, unless the Secretary finds there is good cause for such bills or requests containing such charges (or in applicable cases, such costs); or

(C) has furnished services or supplies which are determined by the Secretary, with the concurrence of the members of the appropriate program review team appointed pursuant to paragraph (4) who are physicians or other professional personnel in the health care field, to be substantially in excess of the needs of individuals or to be harmful to individuals or to be of a grossly inferior quality.

(2) A determination made by the Secretary under this subsection shall be effective at such time and upon such reasonable notice to the public and to the person furnishing the services involved as may be specified in regulations. Such determination shall be effective with respect to services furnished to an individual on or after the effective date of such determination (except that in the case of inpatient hospital services, posthospital extended care services, and home health services such determination shall be effective in the manner provided in section 1866(b) (3) and (4) with respect to terminations of agreements), and shall remain in effect until the Secretary finds and gives reasonable notice to the public that the basis for such determination has been removed and that there is reasonable assurance that it will not recur.

(3) Any person furnishing services described in paragraph (1) who is dissatisfied with a determination made by the Secretary under this subsection shall be entitled to reasonable notice and opportunity for a hearing thereon by the Secretary to the same extent as is provided in section 205(b), and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).

(4) For the purposes of paragraph (1) (B) and (C) of this subsection, and clause (F) of section 1866(b)(2), the Secretary shall, after consultation with appropriate State and local professional societies, the appropriate carriers and intermediaries utilized in the administration of this title, and consumer representatives familiar with the health needs of residents of the State, appoint one or more program review teams (composed of physicians, other professional personnel in the health care field, and consumer representatives) in each State which shall, among other things—

(A) undertake to review such statistical data on program utilization as may be submitted by the Secretary,

(B) submit to the Secretary periodically, as may be prescribed in regulations, a report on the results of such review, together with recommendations with respect thereto,

(C) undertake to review particular cases where there is a likelihood that the person or persons furnishing services and supplies to in-

*dividuals may come within the provisions of paragraph (1) (B) and (C) of this subsection or clause (F) of section 1866(b)(2), and (D) submit to the Secretary periodically, as may be prescribed in regulations, a report of cases reviewed pursuant to subparagraph (C) along with an analysis of, and recommendations with respect to, such cases.*

### **Consultation With State Agencies and Other Organizations To Develop Conditions of Participation for Providers of Services**

**Sec. 1863.** In carrying out his functions, relating to determination of conditions of participation by providers of services, under subsections [(e)(8), (f)(4), (g)(4), (j)(10), and (o)(5)] (e)(9), (f)(4), (g)(4), (j)(11), and (o)(6)<sup>1</sup> of section 1861, the Secretary shall consult with the Health Insurance Benefits Advisory Council established by section 1867, appropriate State agencies, and recognized national listing or accrediting bodies, and may consult with appropriate local agencies. Such conditions prescribed under any of such subsections may be varied for different areas or different classes of institutions or agencies and may, at the request of a State, provide higher requirements for such State than for other States; except that, in the case of any State or political subdivision of a State which imposes higher requirements on institutions as a condition to the purchase of services (or of certain specified services) in such institutions under a State plan approved under title I, XVI, or XIX, the Secretary shall impose like requirements as a condition to the payment for services (or for the services specified by the State or subdivision) in such institutions in such State or subdivision.

### **Use of State Agencies To Determine Compliance by Providers of Services With Conditions of Participation**

**Sec. 1864.** (a) The Secretary shall make an agreement with any State which is able and willing to do so under which the services of the State health agency or other appropriate State agency (or the appropriate local agencies) will be utilized by him for the purpose of determining whether an institution therein is a hospital or extended care facility, or whether an agency therein is a home health agency, or whether a laboratory meets the requirements of paragraphs (10) and (11) of section 1861(s), or whether a clinic, rehabilitation agency or public health agency meets the requirements of subparagraph (A) or (B), as the case may be, of section 1861(p)(4). To the extent that the Secretary finds it appropriate, an institution or agency which such a State (or local) agency certifies is a hospital, extended care facility, or home health agency (as those terms are defined in section 1861) may be treated as such by the Secretary.

(b) The Secretary shall pay any such State, in advance or by way of reimbursement, as may be provided in the agreement with it (and may make adjustments in such payments on account of overpayments or underpayments previously made), for the reasonable cost of performing the functions specified in subsection (a), and for the Federal Hospital Insurance Trust Fund's fair share of the costs attributable to the planning and other efforts directed toward coordination of activi-

<sup>1</sup> Applies to any provider of services for fiscal years (of such provider) beginning after the fifth month following the month of enactment.

ties in carrying out its agreement and other activities related to the provision of services similar to those for which payment may be made under part A, or related to the facilities and personnel required for the provision of such services, or related to improving the quality of such services.

### Effect of Accreditation

**Sec. 1865.** Except as provided in the second sentence of section 1863, an institution shall be deemed to meet the requirements of the numbered paragraphs of section 1861(e) [(except paragraph (6) thereof)] (except paragraphs (6) and (8) thereof) if such institution is accredited as a hospital by the Joint Commission on Accreditation of Hospitals. [If such Commission, as a condition for accreditation of a hospital, requires a utilization review plan or imposes another requirement which serves substantially the same purpose, the Secretary is authorized to find that all institutions so accredited by the Commission comply also with section 1861 (e)(6).] *If such Commission, as a condition for accreditation of a hospital, (1) requires a utilization review plan as defined in section 1861(k) or imposes another requirement which serves substantially the same purpose, or (2) requires institutional plans as defined in section 1861(z) or imposes another requirement which serves substantially the same purpose, the Secretary is authorized to find that all institutions so accredited by the Commission comply also with section 1861(e)(6) or 1861(e)(8), as the case may be.*<sup>1</sup> In addition, if the Secretary finds that accreditation of an institution or agency by the American Osteopathic Association or any other national accreditation body provides reasonable assurance that any or all of the conditions of section 1861 (e), (j), or (o), as the case may be, are met, he may, to the extent he deems it appropriate, treat such institution or agency as meeting the condition or conditions with respect to which he made such finding.

### Agreements With Providers of Services

**Sec. 1866.** (a)(1) Any provider of services (except a fund designated for purposes of section 1814 (g) and section 1835(e))<sup>2</sup> shall be qualified to participate under this title and shall be eligible for payments under this title if it files with the Secretary an agreement—

(A) not to charge, except as provided in paragraph (2), any individual or any other person for items or services for which such individual is entitled to have payment made under this title (or for which he would be so entitled if such provider of services had complied with the procedural and other requirements under or pursuant to this title or for which such provider is paid pursuant to the provisions of section 1814(e)), and

(B) to make adequate provision for return (or other disposition, in accordance with regulations) of any moneys incorrectly collected from such individual or other person.

(2) (A) A provider of services may charge such individual or other person (i) the amount of any deduction or coinsurance amount imposed pursuant to section 1813(a)(1) or (a)(3), section 1833(b), or

<sup>1</sup> Applies to any provider of services for fiscal years (of such provider) beginning after the fifth month following the month of enactment.

<sup>2</sup> Applies to accounting periods beginning after June 30, 1971.

section 1861(y)(3) with respect to such items and services (not in excess of the amount customarily charged for such items and services by such provider), and (ii) an amount equal to 20 per centum of the reasonable charges for such items and services (not in excess of 20 per centum of the amount customarily charged for such items and services by such provider) for which payment is made under part B. In the case of items and services described in section 1833(c), clause (ii) of the preceding sentence shall be applied by substituting for 20 percent the proportion which is appropriate under such section.

(B) (i) Where a provider of services has furnished, at the request of such individual, items or services which are in excess of or more expensive than the items or services with respect to which payment may be made under this title, such provider of services may also charge such individual or other person for such more expensive items or services to the extent that the amount customarily charged by it for the items or services furnished at such request exceeds the amount customarily charged by it for the items or services with respect to which payment may be made under this title

<sup>1</sup> (ii) *Where a provider of services customarily furnishes an individual items or services which are more expensive than the items or services determined to be necessary in the efficient delivery of needed health services under this title and which have not been requested by such individual, such provider may also charge such individual or other person for such more expensive items or services to the extent that the costs of (or if less, the customary charges for) such more expensive items or services experienced by such provider in the second fiscal period immediately preceding the fiscal period in which such charges are imposed exceed the cost of such items or services determined to be necessary in the efficient delivery of needed health services, but only if—*

*(I) the Secretary has provided notice to the public of any charges being imposed on individuals entitled to benefits under this title on account of costs in excess of the costs determined to be necessary in the efficient delivery of needed health services under this title by particular providers of services in the area in which such items or services are furnished, and*

*(II) the provider of services has identified such charges to such individual or other person, in such manner as the Secretary may prescribe, as charges to meet costs in excess of the cost determined to be necessary in the efficient delivery of needed health services under this title.*

(C) A provider of services may in accordance with its customary practice also appropriately charge any such individual for any whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished him with respect to which a deductible is imposed under section 1813(a)(2), except that (i) any excess of such charge over the cost to such provider for the blood (or equivalent quantities of packed red blood cells, as so defined) shall be deducted from any payment to such provider under this title, (ii) no such charge may be imposed for the cost of administration of such blood (or equivalent quantities of packed red blood cells, as so defined) and (iii) such charge may not be made to the extent such blood (or equivalent quantities of packed red blood cells, as so defined) has been

<sup>1</sup> Effective with respect to accounting periods beginning after June 30, 1972.

replaced on behalf of such individual or arrangements have been made for its replacement on his behalf.

*(D) Where a provider of services customarily furnishes items or services which are in excess of or more expensive than the items or services with respect to which payment may be made under this title, such provider, notwithstanding the preceding provisions of this paragraph, may not, under the authority of section 1866(a)(2)(B)(ii), charge any individual or other person any amount for such items or services in excess of the amount of the payment which may otherwise be made for such items or services under this title if the admitting physician has a direct or indirect financial interest in such provider.*

For purposes of [clause (iii) of the preceding sentence] subparagraph (C),<sup>1</sup> whole blood (or equivalent quantities of packed red blood cells, as so defined) furnished an individual shall be deemed replaced when the provider of services is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual with respect to which a deduction is imposed under section 1813(a)(2).

(b) An agreement with the Secretary under this section may be terminated—

(1) by the provider of services at such time and upon such notice to the Secretary and the public as may be provided in regulations, except that notice of more than 6 months shall not be required, or

(2) by the Secretary at such time and upon such reasonable notice to the provider of services and the public as may be specified in regulations, but only after the Secretary has determined (A) that such provider of services is not complying substantially with the provisions of such agreement, or with the provisions of this title and regulations thereunder, or (B) that such provider of services no longer substantially meets the applicable provisions of section 1861, or (C) that such provider of services has failed to provide such information as the Secretary finds necessary to determine whether payments are or were due under this title and the amounts thereof, or has refused to permit such examination of its fiscal and other records by or on behalf of the Secretary as may be necessary to verify such information, or (D) that such provider has made, or caused to be made, any false statement or representation of a material fact for use in an application for payment under this title or for use in determining the right to a payment under this title, or (E) that such provider has submitted, or caused to be submitted, requests for payment under this title of amounts for rendering services substantially in excess of the costs incurred by such provider for rendering such services, or (F) that such provider has furnished services or supplies which are determined by the Secretary, with the concurrence of the members of the appropriate program review team appointed pursuant to section 1862(d)(4) who are physicians or other professional personnel in the health care field, to be substantially in excess of the needs of individuals or to be harmful to individuals or to be of a grossly inferior quality.

<sup>1</sup> Effective with respect to accounting periods beginning after June 30, 1972.



Any termination shall be applicable—

(3) in the case of inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital service) or post-hospital extended care services, with respect to such services furnished to any individual who is admitted to the hospital or extended care facility furnishing such services on or after the effective date of such termination,

(4)(A) with respect to home health services furnished to an individual under a plan therefor established on or after the effective date of such termination, or (B) if a plan is established before such effective date, with respect to such services furnished to such individual after the calendar year in which such termination is effective, and

(5) with respect to any other items and services furnished on or after the effective date of such termination.

(c) Where an agreement filed under this title by a provider of services has been terminated by the Secretary, such provider may not file another agreement under this title unless the Secretary finds that the reason for the termination has been removed and that there is reasonable assurance that it will not recur.

(d) If the Secretary finds that there is a substantial failure to make timely review in accordance with section 1861(k) of long-stay cases in a hospital or extended care facility, he may, in lieu of terminating his agreement with such hospital or facility, decide that, with respect to any individual admitted to such hospital or facility after a subsequent date specified by him, no payment shall be made under this title for inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) after the 20th day of a continuous period of such services or for post-hospital extended care services after such day of a continuous period of such care as is prescribed in or pursuant to regulations, as the case may be. Such decision may be made effective only after such notice to the hospital, or (in the case of an extended care facility) to the facility and the hospital or hospitals with which it has a transfer agreement, and to the public, as may be prescribed by regulations, and its effectiveness shall terminate when the Secretary finds that the reason therefor has been removed and that there is reasonable assurance that it will not recur. The Secretary shall not make any such decision except after reasonable notice and opportunity for hearing to the institution or agency affected thereby.

(e) For purposes of this section, the term "provider of services" shall include a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or agency meets the requirements of section 1861(p)(4)(A), or if, in the case of a public health agency, such agency meets the requirements of section 1861(p)(4)(B), but only with respect to the furnishing of outpatient physical therapy services (as therein defined).

### Health Insurance Benefits Advisory Council

**Sec. 1867.** (a) There is hereby created a Health Insurance Benefits Advisory Council which shall consist of 19 persons, not otherwise in the employ of the United States, appointed by the Secretary with-

out regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The Secretary shall from time to time appoint one of the members to serve as Chairman. The members shall include persons who are outstanding in fields related to hospital, medical, and other health activities, persons who are representative of organizations and associations of professional personnel in the field of medicine, and at least one person who is representative of the general public. Each member shall hold office for a term of 4 years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. A member shall not be eligible to serve continuously for more than 2 terms. The Secretary may, at the request of the Advisory Council or otherwise, appoint such special advisory professional or technical committees as may be useful in carrying out this title. Members of the Advisory Council and members of any such advisory or technical committee, while attending meetings or conferences thereof or otherwise serving on business of the Advisory Council or of such committee, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding \$100 per day, including travel time, and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently. The Advisory Council shall meet as frequently as the Secretary deems necessary. Upon request of 5 or more members, it shall be the duty of the Secretary to call a meeting of the Advisory Council.

(b) It shall be the function of the Advisory Council (1) to advise the Secretary on matters of general policy in the administration of this title and in the formulation of regulations under this title, and (2) to study the utilization of hospital and other medical care and services for which payment may be made under this title with a view to recommending any changes which may seem desirable in the way in which such care and services are utilized or in the administration of the programs established by this title, or in the provisions of this title. The Advisory Council shall make an annual report to the Secretary on the performance of its functions, including any recommendations it may have with respect thereto, and such report shall be transmitted promptly by the Secretary to the Congress.

(c) The Advisory Council is authorized to engage such technical assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Advisory Council such secretarial, clerical, and other assistance and such pertinent data obtained and prepared by the Department of Health, Education, and Welfare as the Advisory Council may require to carry out its functions.

Sec. 1868. [Repealed.]

### Determinations; Appeals

Sec. 1869. (a) The determination of whether an individual is entitled to benefits under part A or part B, and the determination of the amount of benefits under part A, shall be made by the Secretary in accordance with regulations prescribed by him.

(b) Any individual dissatisfied with any determination under subsection (a) as to entitlement under part A or part B, or as to amount of benefits under part A where the matter in controversy is \$100 or more, shall be entitled to a hearing thereon by the Secretary to the same extent as is provided in section 205(b), and, in the case of a determination as to entitlement or as to amount of benefits where the amount in controversy is \$1,000 or more, to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).

(c) Any institution or agency dissatisfied with any determination by the Secretary that it is not a provider of services, or with any determination described in section 1866(b)(2), shall be entitled to a hearing thereon by the Secretary (after reasonable notice and opportunity for hearing) to the same extent as is provided in section 205(b), and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).

### **Overpayments on Behalf of Individuals and Settlement of Claims for Benefits on Behalf of Deceased Individuals**

**Sec. 1870.** (a) Any payment under this title to any provider of services or other person with respect to any items or services furnished any individual shall be regarded as a payment to such individual.

(b) Where—

(1) more than the correct amount is paid under this title to a provider of services or other person for items or services furnished an individual and the Secretary determines that, within such period as he may specify, the excess over the correct amount cannot be recouped from such provider of services or other person, or

(2) any payment has been made under section 1814(e) to a provider of services or other person for items or services furnished an individual,

proper adjustments shall be made, under regulations prescribed (after consultation with the Railroad Retirement Board) by the Secretary, by decreasing subsequent payments—

(3) to which such individual is entitled under title II of this Act or under the Railroad Retirement Act of 1937, as the case may be, or

(4) if such individual dies before such adjustment has been completed, to which any other individual is entitled under title II of this Act or under the Railroad Retirement Act of 1937, as the case may be, with respect to the wages and self-employment income or the compensation constituting the basis of the benefits of such deceased individual under title II of such Act.

As soon as practicable after any adjustment under paragraph (3) or (4) is determined to be necessary, the Secretary, for purposes of this section, section 1817(g), and section 1841(f), shall certify (to the Railroad Retirement Board if the adjustment is to be made by decreasing subsequent payments under the Railroad Retirement Act of 1937) the amount of the overpayment as to which the adjustment is to be made.

(c) There shall be no adjustment as provided in subsection (b) (nor shall there be recovery) in any case where the incorrect payment has

been made (including payments under section 1814(e)) with respect to an individual who is without fault [and where] *or where the adjustment (or recovery) would be made by decreasing payments to which another person who is without fault is entitled as provided in subsection (b)(4), if*<sup>1</sup> such adjustment (or recovery) would defeat the purposes of title II or would be against equity and good conscience.

(d) No certifying or disbursing officer shall be held liable for any amount certified or paid by him to any provider of services or other person where the adjustment or recovery of such amount is waived under subsection (c) or where adjustment under subsection (b) is not completed prior to the death of all persons against whose benefits such adjustment is authorized.

(e) If an individual, who received services for which payment may be made to such individual under this title, dies, and payment for such services was made (other than under this title), and the individual died before any payment due him under this title with respect to such services was completed, payment of the amount due (including the amount of any unnegotiated checks) shall be made—

(1) if the payment for such services was made (before or after such individual's death) by a person other than the deceased individual, to the person or persons determined by the Secretary under regulations to have paid for such services, or if the payment for such services was made by the deceased individual before his death, to the legal representative of the estate of such deceased individual, if any;

(2) if there is no person who meets the requirements of paragraph (1), to the person, if any, who is determined by the Secretary to be the surviving spouse of the deceased individual and who was either living in the same household with the deceased at the time of his death or was, for the month in which the deceased individual died, entitled to a monthly benefit on the basis of the same wages and self-employment income as was the deceased individual;

(3) if there is no person who meets the requirements of paragraph (1) or (2), or if the person who meets such requirements dies before the payment due him under this title is completed, to the child or children, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(4) if there is no person who meets the requirements of paragraph (1), (2), or (3), or if each person who meets such requirements dies before the payment due him under this title is completed, to the parent or parents, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent);

<sup>1</sup> Applies to waiver actions considered after the date of enactment.

(5) if there is no person who meets the requirements of paragraph (1), (2), (3), or (4), or if each person who meets such requirements dies before the payment due him under this title is completed, to the person, if any, determined by the Secretary to be the surviving spouse of the deceased individual;

(6) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), or (5), or if each person who meets such requirements dies before the payment due him under this title is completed, to the person or persons, if any, determined by the Secretary to be the child or children of the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(7) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), (5), or (6), or if each person who meets such requirements dies before the payment due him under this title is completed, to the parent or parents, if any, of the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent); or

(8) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), (5), (6), or (7), or if each person who meets such requirements dies before the payment due him under this title is completed, to the legal representatives of the estate of the deceased individual, if any.

(f) If an individual who received medical and other health services for which payment may be made under section 1832(a)(1) dies, and—

(1) no assignment of the right to payments was made by such individual before his death, and

(2) payment for such services has not been made, payment for such services shall be made to the physician or other person who provided such services, but payment shall be made under this subsection only in such amount and subject to such conditions as would have been applicable if the individual who received the services had not died, and only if the person or persons who provided the services agrees that the reasonable charge is the full charge for the services.

*(g) If an individual, who is enrolled under section 1818(c) of the Social Security Act or under section 1837, dies, and premiums with respect to such enrollment have been received with respect to such individual for any month after the month of his death, such premiums shall be refunded to the person or persons determined by the Secretary under regulations to have paid such premiums or if payment for such premiums was made by the deceased individual before his death, to the legal representative of the estate of such deceased individual, if any. If there is no person who meets the requirements of the preceding sentence such premiums shall be refunded to the person or persons in the priorities specified in paragraphs (2) through (7) of subsection (e).*

### Regulations

**Sec. 1871.** The Secretary shall prescribe such regulations as may be necessary to carry out the administration of the insurance programs under this title. When used in this title, the term "regulations" means.

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unless the context otherwise requires, regulations prescribed by the Secretary.

### Application of Certain Provisions of Title II

**Sec. 1872.** The provisions of sections 206, [208,] and 216(j), and of subsections (a), (d), (e), (f), (h), (i), (j), (k), and (l) of section 205, shall also apply with respect to this title to the same extent as they are applicable with respect to title II.

### Designation of Organization or Publication by Name

**Sec. 1873.** Designation in this title, by name, of any nongovernmental organization or publication shall not be affected by change of name of such organization or publication, and shall apply to any successor organization or publication which the Secretary finds serves the purpose for which such designation is made.

### Administration

**Sec. 1874.** (a) Except as otherwise provided in this title and in the Railroad Retirement Act of 1937, the insurance programs established by this title shall be administered by the Secretary. The Secretary may perform any of his functions under this title directly, or by contract providing for payment in advance or by way of reimbursement, and in such installments, as the Secretary may deem necessary.

(b) The Secretary may contract with any person, agency, or institution to secure on a reimbursable basis such special data, actuarial information, and other information as may be necessary in the carrying out of his functions under this title.

### Studies and Recommendations

**Sec. 1875.** (a) The Secretary shall carry on studies and develop recommendations to be submitted from time to time to the Congress relating to health care of the [aged] *aged and the disabled*, including studies and recommendations concerning (1) the adequacy of existing personnel and facilities for health care for purposes of the programs under parts A and B; (2) methods for encouraging the further development of efficient and economical forms of health care which are a constructive alternative to inpatient hospital care; and (3) the effects of the deductibles and coinsurance provisions upon beneficiaries, persons who provide health services, and the financing of the program.

(b) The Secretary shall make a continuing study of the operation and administration of the insurance programs under parts A and B (including the [experimentation] *experiments and demonstration projects* authorized by section 402 of the Social Security Amendments of 1967 and the *experiments and demonstration projects* authorized by section 222(a) of the Social Security Amendments of 1971), and shall transmit to the Congress annually a report concerning the operation of such programs.

### **Payments to Health Maintenance Organizations<sup>1</sup>**

**Sec. 1876.** (a)(1) *In lieu of amounts which would otherwise be payable pursuant to sections 1814(b) and 1893(a), the Secretary is authorized to determine, by actuarial methods, as provided in this section, but only with respect to a health maintenance organization with which he has entered into a contract under subsection (i), a prospective per capita rate of payment—*

(A) *for services provided under parts A and B for individuals enrolled with such organization pursuant to subsection (e) who are entitled to hospital insurance benefits under part A and enrolled for medical insurance benefits under part B, and*

(B) *for services provided under part B for individuals enrolled with such organization pursuant to subsection (e) who are not entitled to benefits under part A but who are enrolled for benefits under part B.*

(2)(A) *Each such rate of payment shall be determined annually in accordance with regulations and shall be equal to 95 per centum of the amount that the Secretary estimates (with appropriate adjustments to assure actuarial equivalence) would be payable for services covered under this title (including administrative costs incurred by organizations described in sections 1816 and 1842) if such services were to be furnished by other than health maintenance organizations.*

(B) *In order to assure that health maintenance organizations will not be permitted to retain revenues in excess of expenses with respect to such individuals at a rate greater than that applicable to their other enrollees, any contract with a health maintenance organization under this title shall provide that the Secretary shall require, at such time following the expiration of each accounting period of a health maintenance organization (and in such form and in such detail) as he may prescribe:*

(i) *that such organization report to him in a certified public statement the amount retained (as herein defined) and the rate of retention (as herein defined) for the preceding accounting period with respect to (I) individuals enrolled with such organization under this section, considered as a group, and (II) all other individuals enrolled with such organization, considered as a group;*

(ii) *that an audit (meeting requirements prescribed by the Secretary) be conducted with respect to any such organization which has a rate of retention with respect to individuals enrolled under this section which is in excess of 90 per centum of such organization's rate of retention with respect to all other individuals enrolled with such organization;*

(iii) *that such part of the amount retained by any health maintenance organization with respect to individuals enrolled under this section which is attributable to an excessive rate of retention (as herein defined) shall be repaid by such organization unless used by it to provide benefits to enrollees under this section in addition to those specified in subsection (c) or to reduce the premium rates charged by such organization to such enrollees pursuant to subsection (g).*

*For purposes of this section—*

(iv) *the term "amount retained" means the difference between (I) the revenues (irrespective of the source of such revenues) of any health maintenance organization (for any accounting period as*

<sup>1</sup> Effective with respect to services provided on or after Jan. 1, 1972.

defined in regulations) with respect to any group of individuals who are enrolled with such organization and (II) the expenses of such organization (for such accounting period) with respect to such group of individuals;

(v) the term "rate of retention" means the ratio of such amount retained to such revenues, expressed as a percentage; and

(vi) the term "excessive rate of retention" means (I) any rate of retention of any health maintenance organization with respect to individuals enrolled under this section which is greater than such organization's rate of retention with respect to all other individuals enrolled with such organization, or (II) with respect to any health maintenance organization to which subsection (h) applies, any rate of retention with respect to individuals enrolled under this section which is greater than a reasonable rate of retention as determined in accordance with regulations, taking into account the rate of retention experienced by comparable organizations with respect to other individuals enrolled with such comparable organizations.

(3) The payments to health maintenance organizations under this subparagraph with respect to individuals described in subsection (a)(1)(A) shall be made from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund. The portion of such payment to such an organization for a month to be paid by the latter trust fund shall be equal to 200 percent of the sum of—

(A) the product of (i) the number of covered enrollees of such organization for such month (as described in paragraph (1)) who have attained age 65, and (ii) the monthly actuarial rate for supplementary medical insurance for such month as determined under section 1839(c)(1), and

(B) the product of (i) the number of covered enrollees of such organization for such month (as described in paragraph (1)) who have not attained age 65, and (ii) the monthly actuarial rate for supplementary medical insurance for such month as determined under section 1839(c)(4).

The remainder of such payment shall be paid by the former trust fund. For limitation on Federal participation for capital expenditures which are out of conformity with a comprehensive plan of a State or areawide planning agency, see section 1122.

(b) The term "health maintenance organization" means a public or private organization which—

(1) provides, either directly or through arrangements with others, health services to individuals enrolled with such organization under subsection (e) on a per capita prepayment basis;

(2) provides, either directly or through arrangements with others, to the extent applicable in subsection (c) (through institutions, entities, and persons meeting the applicable requirements of section 1861), all of the services and benefits covered under parts A and B of this title;

(3) provides physicians' services (A) directly through physicians who are either employees or partners of such organization, or (B) under arrangements with one or more groups of physicians (organized on a group practice or individual practice basis) under which each such group is reimbursed for its services primarily on the basis of an aggregate fixed sum or on a per capita basis, regardless of whether



the individual physician members of any such group are paid on a fee-for-service or other basis;

(4) demonstrates to the satisfaction of the Secretary proof of financial responsibility and proof of capability to provide comprehensive health care services, including institutional services, efficiently, effectively, and economically;

(5) except as provided in subsection (h), has at least half of its enrolled members consisting of individuals under age 65;

(6) assures that the health services required by its members are received promptly and appropriately and that the services that are received measure up to quality standards which it establishes in accordance with regulations; and

(7) has an open enrollment period at least every year under which it accepts up to the limits of its capacity and without restrictions, except as may be authorized in regulations, individuals who are eligible to enroll under subsection (d) in the order in which they apply for enrollment (unless to do so would result in failure to meet the requirements of paragraph (5)).

(c) The benefits provided under this section shall consist of—

(1) in the case of an individual who is entitled to hospital insurance benefits under part A and enrolled for medical insurance benefits under part B—

(A) entitlement to have payment made on his behalf for all services described in section 1812 and section 1832 which are furnished to him by the health maintenance organization with which he is enrolled pursuant to subsection (e) of this section; and

(B) entitlement to have payment made by such health maintenance organization to him or on his behalf for such emergency services (as defined in regulations), or such other services as may be determined, in accordance with subsection (f), to be services which the individual was entitled to have furnished by the health maintenance organization, as may be furnished to him by a physician, supplier, or provider of services, other than the health maintenance organization with which he is enrolled; and

(2) in the case of an individual who is not entitled to hospital insurance benefits under part A but who is enrolled for medical insurance benefits under part B, entitlement to have payment made for services described in paragraph (1), but only to the extent that such services are also described in section 1832.

(d) Subject to the provisions of subsection (e), every individual described in subsection (c) shall be eligible to enroll with any health maintenance organization (as defined in subsection (b)) which serves the geographic area in which such individual resides.

(e) An individual may enroll with a health maintenance organization under this section, and may terminate such enrollment, as may be prescribed by regulations.

(f) Any individual enrolled with a health maintenance organization under this section who is dissatisfied by reason of his failure to receive without additional cost to him any health service to which he believes he is entitled shall, if the amount in controversy is \$100 or more, be entitled to a hearing before the Secretary to the same extent as is provided in section 205(b) and in any such hearing the Secretary shall make such health maintenance organization a party thereto. If the amount in controversy is

\$1,000 or more, such individual or health maintenance organization shall be entitled to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).

(g)(1) If the health maintenance organization provides its enrollees under this section only the services described in subsection (c), its premium rate for such enrollees shall not exceed the actuarial value of the deductible and coinsurance which would otherwise be applicable to such enrollees under part A and part B, if they were not enrolled under this section.

(2) If the health maintenance organization provides to its enrollees under this section services in addition to those described in subsection (c), it shall furnish such enrollees with information on the portion of its premium rate applicable to such additional services. The portion applicable to the services described in subsection (c) may not exceed the actuarial value of the deductible and coinsurance which would otherwise be applicable to such enrollees under part A and part B if they were not enrolled under this section.

(h) The provisions of paragraph (5) of subsection (b) shall not apply with respect to any health maintenance organization for such period not to exceed three years from the date such organization enters into an agreement with the Secretary pursuant to subsection (i), as the Secretary may permit, but only so long as such organization demonstrates to the satisfaction of the Secretary by the submission of its plans for each year that it is making continuous efforts and progress toward achieving compliance with the provisions of such paragraph (5) within such three-year period.

(i)(1) The Secretary is authorized to enter into a contract with any health maintenance organization which undertakes to provide, on a per capita prepayment basis, the services described in section 1832 (and section 1812, in the case of individuals who are entitled to hospital insurance benefits under part A) to individuals enrolled with such organization pursuant to subsection (e).

(2) Each contract under this section shall be for a term of at least one year, as determined by the Secretary, and may be made automatically renewable from term to term in the absence of notice by either party of intention to terminate at the end of the current term; except that the Secretary may terminate any such contract at any time (after such reasonable notice and opportunity for hearing to the health maintenance organization involved as he may provide in regulations), if he finds that the organization (A) has failed substantially to carry out the contract, (B) is carrying out the contract in a manner inconsistent with the efficient and effective administration of this section, or (C) no longer substantially meets the applicable conditions of subsection (b).

(3) The effective date of any contract executed pursuant to this subsection shall be specified in such contract pursuant to the regulations.

(4) Each contract under this section—

(A) Shall provide that the Secretary, or any person or organization designated by him—

(i) shall have the right to inspect or otherwise evaluate the quality, appropriateness, and timeliness of services performed under such contract; and

(ii) shall have the right to audit and inspect any books and records of such health maintenance organization which pertain

to services performed and determinations of amounts payable under such contract; and

(B) shall contain such other terms and conditions not inconsistent with this section as the Secretary may find necessary.

(j) The function vested in the Secretary by subsection (i) may be performed without regard to such provisions of law or of other regulations relating to the making, performance, amendment, or modification of contracts of the United States as the Secretary may determine to be inconsistent with the furtherance of the purposes of this title.

### Penalties<sup>1</sup>

#### Sec. 1877. (a) Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under this title,<sup>2</sup>

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to any such benefit or payment,

(3) having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment of any other individual in whose behalf he has applied for or is receiving such benefit or payment, conceals or fails to disclose such event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized, or

(4) having made application to receive any such benefit or payment for the use and benefit of another and having received it, knowingly and willfully converts such benefit or payment or any part thereof to a use other than for the use and benefit of such other person, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$10,000 or imprisoned for not more than one year, or both.

(b) Any provider of services, supplier, physician, or other person who furnishes items or services to an individual for which payment is or may be made under this title and who solicits, offers, or receives any—

(1) kickback or bribe in connection with the furnishing of such items or services or the making or receipt of such payment, or

(2) rebate of any fee or charge for referring any such individual to another person for the furnishing of such items or services, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$10,000 or imprisoned for not more than one year, or both.

(c) Whoever knowingly and willfully makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to the conditions or operation of any institution or facility in order that such institution or facility may qualify as a hospital, extended care facility, or home health agency (as those terms are defined in section 1861), shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$2,000 or imprisoned for not more than 6 months, or both.

<sup>1</sup> Shall not apply to any acts, statements, or representations made or committed prior to the enactment.

### **Provider Reimbursement Review Board<sup>1</sup>**

**Sec. 1878.** (a) Any provider of services which has filed a required cost report within the time specified in regulations may obtain a hearing with respect to such cost report by a Provider Reimbursement Review Board (hereinafter referred to as the "Board") which shall be established by the Secretary in accordance with subsection (g), if—

(1) such provider is dissatisfied with a final determination of the organization serving as its fiscal intermediary pursuant to section 1816 as to the amount of total program reimbursement due the provider for the items and services furnished to individuals for which payment may be made under this title for the period covered by such report,

(2) the amount in controversy is \$10,000 or more, and

(3) such provider files a request for a hearing within 180 days after notice of the intermediary's final determination under paragraph (1).

(b) At such hearing, the provider of services shall have the right to be represented by counsel, to introduce evidence, and to examine and cross-examine witnesses. Evidence may be received at any such hearing even though inadmissible under rules of evidence applicable to court procedure.

(c) A decision by the Board shall be based upon the record made at such hearing, which shall include the evidence considered by the intermediary and such other evidence as may be obtained or received by the Board, and shall be supported by substantial evidence when the record is viewed as a whole. The Board shall have the power to affirm, modify, or reverse a final determination of the fiscal intermediary with respect to a cost report and to make any other revisions on matters covered by such cost report (including revisions adverse to the provider of services) even though such matters were not considered by the intermediary in making such final determination.

(d) The Board shall have full power and authority to make rules and establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out the provisions of this section. In the course of any hearing the Board may administer oaths and affirmations. The provisions of subsections (d), (e), and (f) of section 205 with respect to subpoenas shall apply to the Board to the same extent as they apply to the Secretary with respect to title II.

(e) A decision of the Board shall be final unless the Secretary, on his own motion, and within 60 days after the provider of services is notified of the Board's decision, reverses or modifies (adversely to such provider) the Board's decision. In any case where such a reversal or modification occurs the provider of services may obtain a review of such decision by a civil action commenced within 60 days of the date he is notified of the Secretary's reversal or modification. Such action shall be brought in the district court of the United States for the judicial district in which the provider is located or in the District Court for the District of Columbia and shall be tried pursuant to the applicable provisions under chapter 7 of title 5, United States Code, notwithstanding any other provisions in section 205.

(f) The finding of a fiscal intermediary that no payment may be made under this title for any expenses incurred for items or services furnished to an individual because such items or services are listed in section 1862

<sup>1</sup> Applies to cost reports of providers of services, as defined in title XVIII of the Act, for accounting periods beginning after June 30, 1971.

shall not be reviewed by the Board, or by any court pursuant to an action brought under subsection (e).

(g) The Board shall be composed of five members appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive services. Two of such members shall be representative of providers of services. All of the members of the Board shall be persons knowledgeable in the field of cost reimbursement, and at least one of them shall be a certified public accountant. Members of the Board shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the rate specified (at the time the service involved is rendered by such members) for grade GS-18 in section 5332 of title 5, United States Code. The term of office shall be three years, except that the Secretary shall appoint the initial members of the Board for shorter terms to the extent necessary to permit staggered terms of office.

(h) The Board is authorized to engage such technical assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Board such secretarial, clerical, and other assistance as the Board may require to carry out its functions.

TITLE XIX—GRANTS TO STATES FOR  
MEDICAL ASSISTANCE PROGRAMS

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**Appropriation**

**Sec. 1901.** For the purpose of enabling each State, as far as practicable under the conditions in such State, to furnish (1) medical assistance on behalf of [families with dependent children] *needy families with children* and of aged, blind, or [permanently and totally] disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services, and (2) rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health, Education, and Welfare, State plans for medical assistance.

**State Plans for Medical Assistance**

**Sec. 1902.** (a) A State plan for medical assistance must—

- (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;
- (2) provide for financial participation by the State equal to not less than 40 percentum of the non-Federal share of the expenditures under the plan with respect to which payments under section 1903 are authorized by this title; and, effective July 1, 1969, provide for financial participation by the State equal to all of such non-Federal share or provide for distribution of funds from Federal or State sources, for carrying out the State plan, on an equalization or other basis which will assure that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan;
- (3) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for medical assistance under the plan is denied or is not acted upon with reasonable promptness;

(4) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods, and including provision for utilization of professional medical personnel in the administration and, where administered locally, supervision of administration of the plan) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency;

(5) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan [except that the determination of eligibility for medical assistance under the plan shall be made by the State or local agency administering the State plan approved under title I or XVI (insofar as it relates to the aged)];

(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the plan;

(8) provide that all individuals wishing to make application for medical assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals;

(9) [provide for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for private or public institutions in which recipients of medical assistance under the plan may receive care or services;] provide—

*(A) that the State health agency, or other appropriate State medical agency (whichever is utilized by the Secretary for the purpose specified in the first sentence of section 1864(a)), shall be responsible for establishing and maintaining health standards for private or public institutions in which recipients of medical assistance under the plan may receive care or services, and*

*(B) for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards, other than those relating to health, for such institutions;*

[(10) provide for making medical assistance available to all individuals receiving aid or assistance under State plans approved under titles I, X, XIV, and XVI, and part A of title IV; and

[(A) provide that the medical assistance made available to individuals receiving aid or assistance under any such State plan—

[(i) shall not be less in amount, duration, or scope than the medical assistance made available to individuals receiving aid or assistance under any other such State plan, and

[(ii) shall not be less in amount, duration, or scope than the medical or remedial care and services made available to individuals not receiving aid or assistance under any such plan; and

[(B) if medical or remedial care and services are included for any group of individuals who are not receiving aid or assistance under any such State plan and who do not meet the income and resources requirements of the one of such State plans which is appropriate, as determined in accordance with standards prescribed by the Secretary, provide—

[(i) for making medical or remedial care and services available to all individuals who would, if needy, be eligible for aid or assistance under any such State plan and who have insufficient (as determined in accordance with comparable standards) income and resources to meet the costs of necessary medical or remedial care and services, and

[(ii) that the medical or remedial care and services made available to all individuals not receiving aid or assistance under any such State plan shall be equal in amount, duration, and scope;]

(10) *effective July 1, 1972, provide, subject to paragraph (14) of this subsection and to subsection (e) of this section, and in accordance with the provisions of section 1903(f)—*

(A) *for making medical assistance available (in equal amount, duration, and scope) to all individuals who are receiving assistance to needy families with children as defined in section 405(b) or receiving assistance for the aged, blind, and disabled under title XX, or with respect to whom payments for foster care are made in accordance with section 406;*

(B) *if the standard for medical assistance established under the State plan is more than 100 percent (but less than 133½ percent) of the combined amount specified in clauses (A) and (B) of paragraph (2) of section 1903(f), provide—*

(i) *for making medical or remedial care and services available to—*

(I) *individuals who are aged, blind, or disabled as defined in title XX, and families (as defined in title XXI), not receiving assistance under title XX or XXI, and*

(II) *children who are members of families (other than needy families with children as defined in section 405(b)) receiving assistance under title XXI, in cases where the income of the individual or the income of all the members of the family is (after deducting such individual's or such family's incurred medical expenses as*



*defined in section 213 of the Internal Revenue Code of 1954) less than such standard, and*

*(ii) that the medical or remedial care and services made available to all such individuals and families shall be equal in amount, duration, and scope, and shall not be more than the medical assistance made available to individuals described in subparagraph (A); and*

*(C) if medical or remedial care or services are included for any group of individuals who are not included in subparagraphs (A) and (B), provide—*

*(i) for making medical or remedial care and services available to all such individuals who would, if needy, be eligible for assistance under title XX or XXI and who have insufficient income and resources to meet the costs of necessary medical or remedial care and services, and*

*(ii) that the medical or remedial care and services made available to all such individuals shall be equal in amount, duration, and scope, and shall not be more than the medical assistance made available to individuals described in subparagraph (A);*

except that (I) the making available of the services described in paragraph (4) or (14) of section 1905(a) to individuals meeting the age requirement prescribed therein shall not, by reason of this paragraph (10), require the making available of any such services, or the making available of such services of the same amount, duration, and scope, to individuals of any other ages, and (II) the making available of supplementary medical insurance benefits under part B of title XVIII to individuals eligible therefor (either pursuant to an agreement entered into under section 1843 or by reason of the payment of premiums under such title by the State agency on behalf of such individuals), or provision for meeting part or all of the cost of the deductibles, cost sharing, or similar charges under part B of title XVIII for individuals eligible for benefits under such part, shall not, by reason of this paragraph (10), require the making available of any such benefits, or the making available of services of the same amount, duration, and scope, to any other individuals;

(11)(A) provide for entering into cooperative arrangements with the State agencies responsible for administering or supervising the administration of health services and vocational rehabilitation services in the State looking toward maximum utilization of such services in the provision of medical assistance under the plan; and (B) [effective July 1, 1969,] provide, to the extent prescribed by the Secretary, for entering into agreements, with any agency, institution, or organization receiving payments for part or all of the cost of plans or projects under title V, (i) providing for utilizing such agency, institution, or organization in furnishing care and services which are available under such plan or project under title V and which are included in the State plan approved under this section and (ii) making such provision as may be appropriate for reimbursing such agency, institution, or organization for the cost of any such care and services furnished any

individual for which payment would otherwise be made to the State with respect to him under section 1903;

(12) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select;

(13) provide—

(A) for inclusion of some institutional and some non-institutional care and services, and

(B) in the case of individuals [receiving aid or assistance under the State's plan approved under title I, X, XIV, or XVI, or part A of title IV,] *described in paragraph (10) with respect to whom medical assistance must be made available*, for the inclusion of at least the care and services listed in clauses (1) through (5) of section 1905 (a), and

(C) in the case of individuals not included under subparagraph (B) for the inclusion of at least—

(i) the care and services listed in clauses (1) through (5) of section 1905(a) or

(ii)(I) the care and services listed in any 7 of the clauses numbered (1) through (14) of such section and (II) in the event the care and services provided under the State plan include hospital or skilled nursing home services, physicians' services to an individual in a hospital or skilled nursing home during any period he is receiving hospital services from such hospital or skilled nursing home services from such home, and

(D) for payment of the reasonable cost [(as determined in accordance with standards approved by the Secretary and included in the plan)] of inpatient hospital services provided under the plan [;]<sup>1</sup>, *as determined in accordance with methods and standards, consistent with section 1122, which shall be developed by the State and included in the plan, except that the reasonable cost of any such services as determined under such methods and standards shall not exceed the amount which would be determined under section 1861(v) as the reasonable cost of such services for purposes of title XVIII.*<sup>1</sup>

[(14) provide that (A) in the case of individuals receiving aid or assistance under State plans approved under titles I, X, XIV, XVI, and part A of title IV, no deduction, cost sharing, or similar charge will be imposed under the plan on the individual with respect to inpatient hospital services furnished him under the plan, and (B) any deduction, cost sharing, or similar charge imposed under the plan with respect to inpatient hospital services or any other medical assistance furnished to an individual thereunder, and any enrollment fee, premium, or similar charge imposed under the plan, shall be reasonably related (as determined in accordance with standards approved by the Secretary and included in the plan) to the recipient's income or his income and resources;]<sup>1</sup>

<sup>1</sup> Effective July 1, 1972 (or earlier if the State plan so provides).

(14) effective January 1, 1972, [provide that] provide, subject to section 1903(f), that—

(A) in the case of individuals [receiving aid or assistance under a State plan approved under title I, X, XIV, or XVI, or part A of title IV, or who meet the income and resources requirements of the one of such State plans which is appropriate] receiving assistance to needy families with children as defined in section 405(b) or assistance for the aged, blind, and disabled under title XX, or who meet the income and resources requirements for such assistance

(i) no enrollment fee, premium, or similar charge, and no deduction, cost sharing, or similar charge with respect to the care and services listed in clauses (1) through (5) and (7) of section 1905(a), will be imposed under the plan, and

(ii) any deduction, cost sharing, or similar charge imposed under the plan with respect to other care and services will be nominal in amount (as determined in accordance with standards approved by the Secretary and included in the plan), and

(B) with respect to individuals [who are not receiving aid or assistance under any such State plan and who do not meet the income and resources requirements of the one of such State plans which is appropriate] who are not receiving assistance to needy families with children as defined in section 405(b) or assistance for the aged, blind, and disabled under title XX and who do not meet the income and resources requirements for such assistance

(i) there shall be imposed an enrollment fee, premium, or similar charge which (as determined in accordance with standards prescribed by the Secretary) is related to the individual's income, and

(ii) no other enrollment fee or premium will be imposed under the plan;

(15) in the case of eligible individuals 65 years of age or older who are covered by either or both of the insurance programs established by title XVIII, provide where, under the plan, all of any deductible, cost sharing, or similar charge imposed with respect to such individual under the insurance program established by such title is not met, the portion thereof which is met shall be determined on a basis reasonably related (as determined in accordance with standards approved by the Secretary and included in the plan) to such individual's income or his income and resources;

(16) provide for inclusion, to the extent required by regulations prescribed by the Secretary, of provisions (conforming to such regulations) with respect to the furnishing of medical assistance under the plan to individuals who are residents of the State but are absent therefrom;

(17) include reasonable standards (which shall be comparable for all groups and may, in accordance with standards prescribed by the Secretary, differ with respect to income levels, but only in the case of applicants or recipients of assistance under the plan

**【**who are not receiving aid or assistance under the State's plan approved under title I, X, XIV, or XVI, or part A of title IV,**】** *other than those described in paragraph (10) with respect to whom medical assistance must be made available*, based on the variations between shelter costs in urban areas and in rural areas) for determining eligibility for and the extent of medical assistance under the plan which (A) are consistent with the objectives of this title, (B) provide for taking into account only such income and resources as are, as determined in accordance with standards prescribed by the Secretary, available to the applicant or recipient, **【**and (in the case of any applicant or recipient who would, if he met the requirements as to need, be eligible for aid or assistance in the form of money payments under a State plan approved under title I, X, XIV, or XVI, or part A of title IV) as would not be disregarded (or set aside for future needs) in determining his eligibility for and amount of such aid or assistance under such plan,**】** (C) provide for reasonable evaluation of any such income or resources, and (D) do not take into account the financial responsibility of any individual for any applicant or recipient of assistance under the plan unless such applicant or recipient is such individual's spouse or such individual's child who is under age 21 **【**or is blind or permanently and totally disabled**】**; and **【**provide for flexibility**】** *provide, in the case of individuals to whom section 1903(f) does not apply, for flexibility* in the application of such standards with respect to income by taking into account, except to the extent prescribed by the Secretary, the costs (whether in the form of insurance premiums or otherwise) incurred for medical care or for any other type of remedial care recognized under State law;

(18) provide that no lien may be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf under the plan (except pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual), and that there shall be no adjustment or recovery (except, in the case of an individual who was 65 years of age or older when he received such assistance, from his estate, and then only after the death of his surviving spouse, if any, and only at a time when he has no surviving child who is under age 21 **【**or is blind or permanently and totally disabled**】** of any medical assistance correctly paid on behalf of such individual under the plan;

(19) provide such safeguards as may be necessary to assure that eligibility for care and services under the plan will be determined, and such care and services will be provided, in a manner consistent with simplicity of administration and the best interests of the recipients;

(20) if the State plan includes medical assistance in behalf of individuals 65 years of age or older who are patients in institutions for mental diseases—

(A) provide for having in effect such agreements or other arrangements with State authorities concerned with mental diseases, and, where appropriate, with such institutions, as may be necessary for carrying out the State plan, including

arrangements for joint planning and for development of alternate methods of care, arrangements providing assurance of immediate readmittance to institutions where needed for individuals under alternate plans of care, and arrangements providing for access to patients and facilities, for furnishing information, and for making reports;

(B) provide for an individual plan for each such patient to assure that the institutional care provided to him is in his best interests, including, to that end, assurances that there will be initial and periodic review of his medical and other needs; that he will be given appropriate medical treatment within the institution, and that there will be a periodical determination of his need for continued treatment in the institution;

(C) provide for the development of alternate plans of care, making maximum utilization of available resources, for recipients 65 years of age or older who would otherwise need care in such institutions, including appropriate medical treatment and other aid or assistance; for services referred to in [3(a)(4)(A)(i) and (ii) or section 1603(a)(4)(A)(i) and (ii)] *section 1063(a)(1)(A) and (B)* which are appropriate for such recipients and for such patients; and for methods of administration necessary to assure that the responsibilities of the State agency under the State plan with respect to such recipients and such patients will be effectively carried out; and

(D) provide methods of determining the reasonable cost of institutional care for such patients;

(21) if the State plan includes medical assistance in behalf of individuals 65 years of age or older who are patients in public institutions for mental diseases, show that the State is making satisfactory progress toward developing and implementing a comprehensive mental health program, including provision for utilization of community mental health centers, nursing homes, and other alternatives to care in public institutions for mental diseases;

(22) include descriptions of (A) the kinds and numbers of professional medical personnel and supporting staff that will be used in the administration of the plan and of the responsibilities they will have, (B) the standards, for private or public institutions in which recipients of medical assistance under the plan may receive care or services, that will be utilized by the State authority or authorities responsible for establishing and maintaining such standards, (C) the cooperative arrangements with State health agencies and State vocational rehabilitation agencies entered into with a view to maximum utilization of and coordination of the provision of medical assistance with the services administered or supervised by such agencies, and (D) other standards and methods that the State will use to assure that medical or remedial care and services provided to recipients of medical assistance are of high quality; and

(23) provide that any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution,

agency, community pharmacy, or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services; *and a State plan shall not be deemed to be out of compliance with the requirements of this paragraph or paragraph (1) or (10) solely by reason of the fact that the State (or any political subdivision thereof) has entered into a contract with an organization which has agreed to provide care and services in addition to those offered under the State plan to individuals eligible for medical assistance who reside in the geographic area served by such organization and who elect to obtain such care and services from such organization;*

(24) [effective July 1, 1969,] provide for consultative services by health agencies and other appropriate agencies of the State to hospitals, nursing homes, home health agencies, clinics, laboratories, and such other institutions as the Secretary may specify in order to assist them (A) to qualify for payments under this Act, (B) to establish and maintain such fiscal records as may be necessary for the proper and efficient administration of this Act, and (C) to provide information needed to determine payments due under this Act on account of care and services furnished to individuals;

(25) provide (A) that the State or local agency administering such plan will take all reasonable measures to ascertain the legal liability of third parties to pay for care and services (available under the plan) arising out of injury, disease, or disability, (B) that where the State or local agency knows that a third party has such a legal liability such agency will treat such legal liability as a resource of the individual on whose behalf the care and services are made available for purposes of paragraph (17) (B), and (C) that in any case where such a legal liability is found to exist after medical assistance has been made available on behalf of the individual, the State or local agency will seek reimbursement for such assistance to the extent of such legal liability;

(26) [effective July 1, 1969,] provide (A) for a regular program of medical review (including medical [evaluation] *evaluation*) of each patient's need for skilled nursing home [care] *care* or (in the case of individuals who are eligible therefor under the State plan) need for care in a mental hospital, a written plan of care, and, where applicable, a plan of rehabilitation prior to admission to a skilled nursing home; (B) for periodic inspections to be made in all skilled nursing homes and mental institutions (if the State plan includes care in such institutions) within the State by one or more medical review teams (composed of physicians and other appropriate health and social service personnel) of (i) the care being provided in such nursing homes (and mental institutions, if care therein is provided under the State plan) to persons receiving assistance under the State plan, (ii) with respect to each of the patients receiving such care, the adequacy of the services available in particular nursing homes (or institutions) to meet the current health needs and promote the maximum physical well-being of patients receiving care in such homes (or institutions), (iii) the

necessity and desirability of the continued placement of such patients in such nursing homes (or institutions), and (iv) the feasibility of meeting their health care needs through alternative institutional or noninstitutional services; and (C) for the making by such team or teams of full and complete reports of the findings resulting from such inspections together with any recommendations to the State agency administering or supervising the administration of the State plan;

(27) provide for agreements with every person or institution providing services under the State plan under which such person or institution agrees (A) to keep such records as are necessary fully to disclose the extent of the services provided to individuals receiving assistance under the State plan, and (B) to furnish the State agency with such information, regarding any payments claimed by such person or institution for providing services under the State plan, as the State agency may from time to time request;

(28) provide that any skilled nursing home receiving payments under such plan must—

(A) supply to the licensing agency of the State full and complete information as to the identity (i) of each person having (directly or indirectly) an ownership interest of 10 per centum or more in such nursing home, (ii) in case a nursing home is organized as a corporation, of each officer and director of the corporation, and (iii) in case a nursing home is organized as a partnership, of each partner; and promptly report any changes which would affect the current accuracy of the information so required to be supplied;

(B) have and maintain an organized nursing service for its patients, which is under the direction of a professional registered nurse who is employed full-time by such nursing home, and which is composed of sufficient nursing and auxiliary personnel to provide adequate and properly supervised nursing services for such patients during all hours of each day and all days of each week; *except that the State agency with the approval of the Secretary is authorized to waive the requirement of this subparagraph for any one-year period (or less) ending no later than December 31, 1975, with respect to any skilled nursing home where immediately preceding such period the Secretary finds that—*

*(i) such nursing home is located in a rural area and the supply of skilled nursing home services in such area is not sufficient to meet the needs of individuals residing therein; and*

*(ii) the failure of such nursing home to qualify as a skilled nursing home would seriously reduce the availability of such services to beneficiaries in such area; and*

*(iii) such nursing home has made and continues to make a good faith effort to comply with this subparagraph, but such compliance is impeded by the lack of qualified nursing personnel in such area; and*

*(iv) the requirements of this subparagraph were met for a regular daytime shift.*

(C) make satisfactory arrangements for professional planning and supervision of menus and meal service for patients

for whom special diets or dietary restrictions are medically prescribed;

(D) have satisfactory policies and procedures relating to the maintenance of medical records on each patient of the nursing home, dispensing and administering of drugs and biologicals, and assuring that each patient is under the care of a physician and that adequate provision is made for medical attention to any patient during emergencies;

(E) have arrangements with one or more general hospitals under which such hospital or hospitals will provide needed diagnostic and other services to patients of such nursing home, and under which such hospital or hospitals agree to timely acceptance, as patients thereof, of acutely ill patients of such nursing home who are in need of hospital care; except that the State agency may waive this requirement wholly or in part with respect to any nursing home meeting all the other requirements and which, by reason of remote location or other good and sufficient reason, is unable to effect such an arrangement with a hospital; and

(F)(i) meet [(after December 31, 1969)] such provisions of the Life Safety Code of the National Fire Protection Association (21st Edition, 1967) as are applicable to nursing homes; except that the State agency may waive in accordance with regulations of the Secretary, for such periods as it deems appropriate, specific provisions of such code which, if rigidly applied, would result in unreasonable hardship upon a nursing home, but only if such agency makes a determination (and keeps a written record setting forth the basis of such determination) that such waiver will not adversely affect the health and safety of the patients of such skilled nursing home; and except that the requirements set forth in the preceding provisions of this subclause (i) shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects patients in nursing homes; and (ii) meet conditions relating to environment and sanitation applicable to extended care facilities under title XVIII; except that the State agency may waive in accordance with regulations of the Secretary, for such periods as it deems appropriate, any requirement imposed by the preceding provisions of this subclause (ii) if such agency finds that such requirement, if rigidly applied, would result in unreasonable hardship upon a nursing home, but only if such agency makes a determination (and keeps a written record setting forth the basis of such determination) that such waiver will not adversely affect the health and safety of the patients of such nursing home;

(29) include a State program which meets the requirements set forth in section 1908, for the licensing of administrators of nursing homes; [and]

(30) provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan, *(including but not limited to utilization review plans as provided for in section 1903(i)(4))* as may be necessary to safeguard against unnecessary utilization of such care and services



and to assure that payments (including payments for any drugs provided under the plan) are not in excess of reasonable charges consistent with efficiency, economy, and quality of care; **[and]**

(31) provide that no payment under the plan for any care or service provided to an individual by a physician, dentist, or other individual practitioner shall be made to anyone other than such individual or such physician, dentist, or practitioner, except that payment may be made (A) to the employer of such physician, dentist, or practitioner if such physician, dentist, or practitioner is required as a condition of his employment to turn over his fee for such care or service to his employer, or (B) (where the care or service was provided in a hospital, clinic, or other facility) to the facility in which the care or service was provided if there is a contractual arrangement between such physician, dentist, or practitioner and such facility under which such facility submits the bill for such care or service; **[and]**

(32) provide—

(A) that the State health agency, or other appropriate State medical agency, shall be responsible for establishing a plan, consistent with regulations prescribed by the Secretary, for the review by appropriate professional health personnel of the appropriateness and quality of care and services furnished to recipients of medical assistance under the plan in order to provide guidance with respect thereto in the administration of the plan to the State agency established or designated pursuant to paragraph (5) and, where applicable, to the State agency described in the last sentence of this subsection; and

(B) that the State or local agency utilized by the Secretary for the purpose specified in the first sentence of section 1864(a), or, if such agency is not the State agency which is responsible for licensing health institutions, the State agency responsible for such licensing, will perform for the State agency administering or supervising the administration of the plan approved under this title the function of determining whether institutions and agencies meet the requirements for participation in the program under such plan; **[and]**

(33) provide (A) for a regular program of independent professional review (including medical evaluation of each patient's need for intermediate care) and a written plan of service prior to admission or authorization of benefits in an intermediate care facility which provides more than a minimum level of health care services as determined under regulations of the Secretary; (B) for periodic inspections to be made in all such intermediate care facilities (if the State plan includes care in such institutions) within the State by one or more independent professional review teams (composed of physicians or registered nurses and other appropriate health and social service personnel) of (i) the care being provided in such intermediate care facilities to persons receiving assistance under the State plan, (ii) with respect to each of the patients receiving such care, the adequacy of the services available in particular intermediate care facilities to meet the current health needs and promote the maximum physical well-being of patients receiving care in such facilities, (iii) the necessity and desirability of the continued placement of such patients in such facilities, and (iv) the feasibility of meeting their health care needs through alternative institutional or noninstitutional services; and (C) for the making

by such team or teams of full and complete reports of the findings resulting from such inspections, together with any recommendations to the State agency administering or supervising the administration of the State plan; and<sup>1</sup>

(34) provide that in the case of any individual who has been determined to be eligible for medical assistance under the plan, such assistance will be made available to him for care and services included under the plan and furnished in or after the third month before the month in which he made application for such assistance if such individual was (or upon application would have been) eligible for such assistance at the time such care and services were furnished.

**[Notwithstanding paragraph (5), if on January 1, 1965, and on the date on which a State submits its plan for approval under this title, the State agency which administered or supervised the administration of the plan of such State approved under title X (or title XVI, insofar as it relates to the blind) was different from the State agency which administered or supervised the administration of the State plan approved under title I (or title XVI, insofar as it relates to the aged), the State agency which administered or supervised the administration of such plan approved under title X (or title XVI, insofar as it relates to the blind) may be designated to administer or supervise the administration of the portion of the State plan for medical assistance which relates to blind individuals and a different State agency may be established or designated to administer or supervise the administration of the rest of the State plan for medical assistance; and in such case the part of the plan which each such agency administers, or the administration of which each such agency supervises, shall be regarded as a separate plan for purposes of this title (except for purposes of paragraph (10)).]**

*For purposes of paragraphs (9) (A), (26), (28) (B), (D), and (E), (29), and (32), and of section 1903(i)(4), the terms "skilled nursing home" and "nursing home" do not include a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.*

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes as a condition for eligibility for medical assistance under the plan—

(1) an age requirement of more than 65 years; or

(2) **[effective July 1, 1967,]** any age requirement which excludes any individual who has not attained **[the] age [of] [21] 22** and is or would, **[except for the provisions of section 606(a)(2) of this title, be a dependent child under part A of subchapter IV of this chapter;]** *but for the provisions of section 2155(b)(2), be a member of a family eligible for assistance to needy families with children as defined in section 405(b) or be eligible for foster care in accordance with section 406; or*

(3) any residence requirement which excludes any individual who resides in the State; or

(4) any citizenship requirement which excludes any citizen of the United States.

<sup>1</sup> Effective Jan. 1, 1972.

[(c) Notwithstanding subsection (b), the Secretary shall not approve any State plan for medical assistance if he determines that the approval and operation of the plan will result in a reduction in aid or assistance (other than so much of the aid or assistance as is provided for under the plan of the State approved under this title) provided for eligible individuals under a plan of such State approved under title I, X, XIV, or XVI, or part A of title IV.]

(d) Whenever any State desires a modification of the State plan for medical assistance so as to reduce the scope or extent of the care and services *required to be included pursuant to subsection (a)(13) and provided as medical assistance under such plan, [or to terminate any of such care and services,]* the Secretary shall, upon application of the State, approve any such modification if the Governor of such State certifies to the Secretary that—

(1) the average quarterly amount of non-Federal funds expended in providing medical assistance under the plan *with respect to care and services required to be included pursuant to subsection (a)(13)* for any consecutive four-quarter period after the quarter in which such modification takes effect will not be less than the average quarterly amount of such funds expended in providing such assistance for the four-quarter period which immediately precedes the quarter in which such modification is to become effective,

(2) the State is fully complying with the provisions of its State plan (relating to control of utilization and costs of services) which are included therein pursuant to the requirements of subsection (a) (30), and

(3) the modification is not made for the purpose of increasing the standard or other formula for determining payments for those types of care or services which, after such modification, are provided under the State plan,

and if the Secretary finds that the State is complying with the provisions of its State plan referred to in clause (2); except that nothing in this subsection shall be construed to authorize any modification in the State plan of any State which would terminate the care or services required to be included pursuant to subsection (a)(13) of this section. Any increase in the formula or other standard for determining payments for those types of care or services which, after such modification, are provided under the State plan shall be made only after approval thereof by the Secretary.

(e) *Notwithstanding any other provision of this title, no State shall be required to provide medical assistance to any individual or any member of a family for any month unless such State would be (or would have been) required to provide medical assistance to such individual or family member for such month had its plan for medical assistance approved under this title and in effect on January 1, 1971, been in effect in such month, except that for this purpose any such individual or family member shall be deemed eligible for medical assistance under such State plan if (in addition to meeting such other requirements as are or may be imposed under the State plan) the income of any such individual or the income of all of the members of any such family as determined in accordance with section 1903(f) (after deducting such individual's or such family's incurred expenses for medical care as defined in section 213 of the Internal Revenue Code of 1954) is not in excess of the standard for medical assistance established under the State plan as in effect on January 1, 1971.*

## Payment to States

**Sec. 1903.** (a) From the sums appropriated therefor, the Secretary (except as otherwise provided in this section [and section 1117]) shall pay to each State which has a plan approved under this title, for each quarter. [beginning with the quarter commencing January 1, 1966.]

(1) an amount equal to the Federal medical assistance percentage (as defined in section 1905(b) *subject to subsections (g) and (h) of this section*) of the total amount expended during such quarter as medical assistance under the State plan (including expenditures for premiums under part B of title XVIII, for individuals who are recipients of [money payments under a State plan approved under title I, X, XIV, or XVI, or part A of title IV] *assistance to needy families with children as defined in section 405(b) or assistance for the aged, blind, and disabled under title XX, or payments for foster care in accordance with section 406, and, except in the case of individuals sixty-five years of age or older who are not enrolled under part B of title XVIII, other insurance premiums for medical or any other type of remedial care or the cost thereof*); plus

(2) an amount equal to 75 per centum of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to compensation or training of skilled professional medical personnel, and staff directly supporting such personnel of the State agency or any other public agency; plus

(3) an amount equal [to 50 per centum of the remainder of the amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.] to—

(A)(i) *90 per centum of so much of the sums expended during such quarter as are attributable to the design, development, or installation of such mechanized claims processing and information retrieval systems as the Secretary determines are likely to provide more efficient, economical, and effective administration of the plan and to be compatible with the claims processing and information retrieval systems utilized in the administration of title XVIII, including the State's share of the cost of installing such a system to be used jointly in the administration of such State's plan and the plan of any other State approved under this title, and*

(ii) *90 per centum of so much of the sums expended during any such quarter in the fiscal year ending June 30, 1972, or the fiscal year ending June 30, 1973, as are attributable to the design, development, or installation of cost determination systems for State-owned general hospitals (except that the total amount paid to all States under this clause for either such fiscal year shall not exceed \$150,000), and*

(B) *75 per centum of so much of the sums expended during such quarter as are attributable to the operation of systems of the type described in subparagraph (A)(i) (whether or not designed, developed, or installed with assistance under such subparagraph) which are approved by the Secretary and which include provision*

*for prompt written notice to each individual who is furnished services covered by the plan of the specific services so covered, the name of the person or persons furnishing the services, the date or dates on which the services were furnished, and the amount of the payment or payments made under the plan on account of the services; plus*<sup>1</sup>

(4) an amount equal to 50 per centum of the remainder of the amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

(b)(1) Notwithstanding the preceding provisions of this section, the amount determined under such provisions for any State for any quarter which is attributable to expenditures with respect to individuals 65 years of age or older who are patients in institutions for mental diseases shall be paid only to the extent that the State makes a showing satisfactory to the Secretary that total expenditures from Federal, State, and local sources for mental health services (including payments to or in behalf of individuals with mental health problems) under State and local public health and public welfare programs for such quarter exceed the average of the total expenditures from such sources for such services under such programs for each quarter of the fiscal year ending June 30, 1965. For purposes of this subsection, expenditures for such services for each quarter in the fiscal year ending June 30, 1965, in the case of any State shall be determined on the basis of the latest data, satisfactory to the Secretary, available to him at the time of the first determination by him under this subsection for such State; and expenditures for such services for any quarter beginning after December 31, 1965, in the case of any State shall be determined on the basis of the latest data, satisfactory to the Secretary, available to him at the time of the determination under this subsection for such State for such quarter; and determinations so made shall be conclusive for purposes of this subsection.

(2) Notwithstanding the preceding provisions of this section, the amount determined under subsection (a)(1) for any State for any quarter beginning after December 31, 1967, shall not take into account any amounts expended as medical assistance with respect to individuals aged 65 or over which would not have been so expended if the individuals involved had been enrolled in the insurance program established by part B of title XVIII.

(3) *For limitation on Federal participation for capital expenditures which are out of conformity with a comprehensive plan of a State or areawide planning agency, see section 1122.*

[(c)(1) If the Secretary finds, on the basis of satisfactory information furnished by a State, that the Federal medical assistance percentage for such State applicable to any quarter in the period beginning January 1, 1966, and ending with the close of June 30, 1969, is less than 105 per centum of the Federal share of medical expenditures by the State during the fiscal year ending June 30, 1965 (as determined under paragraph (2)), then 105 per centum of such Federal share shall be the Federal medical assistance percentage (instead of the percentage determined under section 1905(b)) for such State for such quarter and each quarter thereafter occurring in such period and

<sup>1</sup> Applies with respect to expenditures under State plans approved under title XIX of the Social Security Act made after June 30, 1971.

prior to the first quarter with respect to which such a finding is not applicable.

[(2) For purposes of paragraph (1), the Federal share of medical expenditures by a State during the fiscal year ending June 30, 1965, means the percentage which the excess of—

[(A) the total of the amounts determined under sections 3, 403, 1003, 1403, and 1603 with respect to expenditures by such State during such year as aid or assistance under its State plans approved under titles I, IV, X, XIV, and XVI, over

[(B) the total of the amounts which would have been determined under such sections with respect to such expenditures during such year if expenditures as aid or assistance in the form of medical or any other type of remedial care had not been counted, is of the total expenditures as aid or assistance in the form of medical or any other type of remedial care under such plans during such year.]

(d)(1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsections (a), (b), and (c) for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsections, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

(2) The Secretary shall then pay to the State, in such installments as he may determine, the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection. Expenditures for which payments were made to the State under subsection (a) shall be treated as an overpayment to the extent that the State or local agency administering such plan has been reimbursed for such expenditures by a third party pursuant to the provisions of its plan in compliance with section 1902(a)(25).

(3) The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to medical assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection.

(4) Upon the making of an estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

[(e) The Secretary shall not make payments under the preceding provisions of this section to any State unless the State makes a satisfactory showing that it is making efforts in the direction of broadening the scope of the care and services made available under the plan and in the direction of liberalizing the eligibility requirements for medical assistance, with a view toward furnishing by July 1, 1975, comprehen-

sive care and services to substantially all individuals who meet the plan's eligibility standards with respect to income and resources, including services to enable such individuals to attain or retain independence or self-care.

[(f)(1)(A) Except as provided in paragraph (4), payment under the preceding provisions of this section shall not be made with respect to any amount expended as medical assistance in a calendar quarter, in any State, for any member of a family the annual income of which exceeds the applicable income limitation determined under this paragraph.

[(B)(i) Except as provided in clause (ii) of this subparagraph, the applicable income limitation with respect to any family is the amount determined, in accordance with standards prescribed by the Secretary, to be equivalent to 133½ percent of the highest amount which would ordinarily be paid to a family of the same size without any income or resources, in the form of money payments, under the plan of the State approved under part A of title IV of this Act.

[(ii) If the Secretary finds that the operation of a uniform maximum limits payments to families of more than one size, he may adjust the amount otherwise determined under clause (i) to take account of families of different sizes.

[(C) The total amount of any applicable income limitation determined under subparagraph (B) shall, if it is not a multiple of \$100 or such other amount as the Secretary may prescribe, be rounded to the next higher multiple of \$100 or such other amount, as the case may be.

[(2) In computing a family's income for purposes of paragraph (1), there shall be excluded any costs (whether in the form of insurance premiums or otherwise) incurred by such family for medical care or for any other type of remedial care recognized under State law.

[(3) For purposes of paragraph (1)(B), in the case of a family consisting of only one individual, the "highest amount which would ordinarily be paid" to such family under the State's plan approved under part A of title IV of this Act shall be the amount determined by the State agency (on the basis of reasonable relationship to the amounts payable under such plan to families consisting of two or more persons) to be the amount of the aid which would ordinarily be payable under such plan to a family (without any income or resources) consisting of one person if such plan (without regard to section 408) provided for aid to such a family.

[(4) The limitations on payment imposed by the preceding provisions of this subsection shall not apply with respect to any amount expended by a State as medical assistance for any individual who, at the time of the provision of the medical assistance giving rise to such expenditure—

[(A) is a recipient of aid or assistance under a plan of such State which is approved under title I, X, XIV, or XVI, or part A of title IV, or

[(B) is not a recipient of aid or assistance under such a plan but (i) is eligible to receive such aid or assistance, or (ii) would be eligible to receive such aid or assistance if he were not in a medical institution.]

(f)(1) *Payment under the preceding provisions of this section shall not be made for amounts expended as medical assistance in any calendar quarter in any State—*

(A) *for any individual who is aged, blind, or disabled, as defined in title XX, and who is not receiving assistance under such title, or*

(B) *for any member of a family as defined in title XXI (whether or not such family is receiving assistance under such title), unless the income of any such individual or the income of all the members of any such family (after deducting such individual's or such family's incurred expenses for medical care as defined in section 213 of the Internal Revenue Code of 1954) is not in excess of the standard for medical assistance established under the State plan in accordance with the provisions of this subsection.*

(2) *Such standard for medical assistance shall not be less than (nor more than 133½ percent of) (A) the highest amount that would be payable under title XXI to an eligible family of the same size without any income or resources, plus (B) the amount of the supplementary payment, if any, made by such State in accordance with section 2156 to such an eligible family.*

(3) *In determining the income of any individual who is aged, blind, or disabled as defined in title XX, there shall be excluded (A) the first \$1,020 per year of such individual's earned income (or proportionately smaller amounts for shorter periods) if he is an individual described in subparagraph (A) or (B) of section 2012(b)(3) or the first \$720 of such individual's earned income (or proportionately smaller amounts for shorter periods) if he is an individual described in subparagraph (C) of such section, and (B) any amounts that would be excluded under section 2012(b) other than under paragraphs (3) and (4) thereof.*

(4) *In determining the income of any family as defined in title XXI, there shall be excluded (A) the first \$720 per year of earned income (or proportionately smaller amounts for shorter periods) of all members of the family, and (B) any amounts that would be excluded under section 2153(b) other than under paragraphs (4) and (5) thereof.*

(g) *The amount determined under subsection (a)(1) for any State shall be adjusted as follows:*

(1) *with respect to amounts paid for services furnished under the State plan after June 30, 1971, pursuant to a contract with (A) a health maintenance organization as defined in section 1876, or (B) a community health center or other similar facility providing comprehensive health care, the Federal medical assistance percentage shall be increased by 25 per centum thereof, except that the Federal medical assistance percentage as so increased may not exceed 95 per centum, and except that such percentage shall be so increased only if such contract provides that payments for services provided under the contract will not exceed the payment levels for similar services provided in the same geographical area and rendered under the plan approved under section 1902; and*

(2) *with respect to amounts paid for the following services furnished under the State plan after June 30, 1971 (other than services furnished pursuant to a contract with a health maintenance organization as defined in section 1876), the Federal medical assistance percentage shall be decreased as follows:*



(A) after an individual has received inpatient hospital services (including services furnished in an institution for tuberculosis) on sixty days (whether or not such days are consecutive) during any fiscal year (which for purposes of this section means the four calendar quarters ending with June 30), the Federal medical assistance percentage with respect to amounts paid for any such services furnished thereafter to such individual in the same fiscal year shall be decreased by 33½ per centum thereof;

(B) after an individual has received care as an inpatient in a skilled nursing home on sixty days (whether or not such days are consecutive) during any fiscal year, the Federal medical assistance percentage with respect to amounts paid for any such care furnished thereafter to such individual in the same fiscal year shall be decreased by 33½ per centum thereof unless the State agency responsible for the administration of the plan makes a showing satisfactory to the Secretary that, with respect to each calendar quarter for which the State submits a request for payment at the full Federal medical assistance percentage for amounts paid for skilled nursing home services furnished beyond sixty days, there is in operation in the State an effective program of control over utilization of skilled nursing home services; such a showing must include evidence that—

(i) in each case for which payment is made under the State plan, a physician certifies at the time of admission, or, if later, the time the individual applies for medical assistance under the State plan (and recertifies, where such services are furnished over a period of time, in such cases, at least every sixty days, and accompanied by such supporting material, appropriate to the case involved, as may be provided in regulations of the Secretary), that such services are or were required to be given on an inpatient basis because the individual needs or needed such services; and

(ii) in each such case, such services were furnished under a plan established and periodically reviewed and evaluated by a physician;

(iii) such State has in effect a continuous program of review of utilization pursuant to section 1902(a)(30) whereby the necessity for admission and the continued stay of each patient in a skilled nursing home is periodically reviewed and evaluated (with such frequency as may be prescribed in regulations of the Secretary) by medical and other professional personnel who are not themselves directly responsible for the care of the patient and who are not employed by or financially interested in any skilled nursing home; and

(iv) such State has an effective program of medical review of the care of patients in skilled nursing homes pursuant to section 1902(a)(26) whereby the medical management of each case is reviewed and evaluated at least annually by independent medical review teams;

(C) after an individual has received inpatient services in a hospital for mental diseases on ninety days (whether or not such days are consecutive), occurring after June 30, 1971, and or up

to an additional thirty days if the State agency responsible for the administration of the plan demonstrates to the satisfaction of the Secretary that the individual is continuing to receive active treatment in such hospital and that the prognosis with respect to such individual is one of continued therapeutic improvement, the Federal medical assistance percentage with respect to amounts paid for any such services furnished to such individual shall be decreased by 33% per centum thereof and no payment may be made under this title for any such services furnished to such individual after such services have been furnished to him for three hundred and sixty-five days.

In determining the number of days on which an individual has received services described in this subsection, there shall not be counted any days with respect to which such individual is entitled to have payments made (in whole or in part) on his behalf under section 1812.

(h) (1) If the Secretary determines for any calendar quarter beginning after December 31, 1971, with respect to any State that there does not exist a reasonable cost differential between the cost of skilled nursing home services and the cost of intermediate care facility services in such State, the Secretary may reduce the amount which would otherwise be considered as expenditures under the State plan by an amount which in his judgment is a reasonable equivalent of the difference between the amount of the expenditures by such State for intermediate care facility services and the amount that would have been expended by such State for such services if there had been a reasonable cost differential between the cost of skilled nursing home services and the cost of intermediate care facility services.

(2) In determining whether any such cost differential in any State is reasonable the Secretary shall take into consideration the range of such cost differentials in all States.

(3) For the purposes of this subsection, the term "cost differential" for any State for any quarter means, as determined by the Secretary on the basis of the data for the most recent calendar quarter for which satisfactory data are available, the excess of—

(A) the average amount paid in such State (regardless of the source of payment) per inpatient day for skilled nursing home services, over

(B) the average amount paid in such State (regardless of the source of payment) per inpatient day for intermediate care facility services.<sup>1</sup>

(i) Payment under the preceding provisions of this section [shall not be made with respect to any amount paid for items or services furnished under the plan after June 30, 1971, to the extent that such amount exceeds the charge which would be determined to be reasonable for such items or services under the third, fourth, and fifth sentences of section 1842(b)(3)] shall not be made—

(1) with respect to any amount paid for items or services furnished under the plan after June 30, 1971, to the extent that such amount exceeds the charge which would be determined to be reasonable for such items or services under the fourth and fifth sentences of section 1842(b)(3); or

(2) with respect to any amount paid for services furnished under the plan after June 30, 1971, by a provider or other person during any period of time, if payment may not be made under title XVIII

<sup>1</sup> Effective July 1, 1971.

with respect to services furnished by such provider or person during such period of time solely by reason of a determination by the Secretary under section 1862(d)(1) or under clause (D), (E), or (F) of section 1866(b)(2); or

(3) with respect to any amount expended for inpatient hospital services furnished under the plan to the extent that such amount exceeds the hospital's customary charges with respect to such services or (if such services are furnished under the plan by a public institution free of charge or at nominal charges to the public) exceeds an amount determined on the basis of those items (specified in regulations prescribed by the Secretary) included in the determination of such payment which the Secretary finds will provide fair compensation to such institution for such services; or<sup>1</sup>

(4) with respect to any amount expended for care or services furnished under the plan by a hospital or skilled nursing home unless such hospital or skilled nursing home has in effect a utilization review plan which meets the requirements imposed by section 1861(k) for purposes of title XVIII; and if such hospital or skilled nursing home has in effect such a utilization review plan for purposes of title XVIII, such plan shall serve as the plan required by this subsection (with the same standards and procedures and the same review committee or group) as a condition of payment under this title.<sup>2</sup>

(j) Notwithstanding the preceding provisions of this section—

(1) in determining the amount payable to any State with respect to expenditures for skilled nursing home services furnished in any calendar quarter beginning after December 31, 1971, there shall not be included as expenditures under the State plan any amount in excess of the product of (A) the number of inpatient days of skilled nursing home services provided under the State plan in such quarter, and (B) 105 per centum of the average per diem cost of such services for the fourth calendar quarter preceding such calendar quarter; and

(2) in determining the amount payable to any State with respect to expenditures for intermediate care facility services furnished in any calendar quarter beginning after December 31, 1971, there shall not be included as expenditures under the State plan any amount in excess of the product of (A) the number of inpatient days of intermediate care facility services provided in such quarter under [each of the plans of such State approved under titles I, X, XIV, XVI, and XIX]<sup>3</sup> the State plan, and (B) 105 per centum of the average per diem cost of such services for the fourth calendar quarter preceding such calendar quarter.

For purposes of determining the amount payable to any State with respect to any quarter under paragraphs (1) and (2), the Secretary may by regulation increase the percentage specified in clause (B) of each such paragraph to the extent necessary to take account of increases in per diem costs which result directly from increases in the Federal minimum wage, or which otherwise result directly from provisions of Federal law enacted (or amendments to Federal law made) after the date of the enactment of the Social Security Amendments of 1971.

<sup>1</sup> Applies with respect to services furnished by hospitals in accounting periods beginning after June 30, 1971.

<sup>2</sup> Applies with respect to services furnished in calendar quarters beginning after June 30, 1972.

<sup>3</sup> Effective July 1, 1973

### Operation of State Plans

**Sec. 1904.** If the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this title, finds—

(1) that the plan [has been so changed that it] no longer complies with the provisions of section 1902; or

(2) that in the administration of the plan there is a failure to comply substantially with any such provision;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure), until the Secretary is satisfied that there will no longer be any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure.)

### Definitions

**Sec. 1905.** For purposes of this title—

(a) The term “medical assistance” means payment of part or all of the cost of the following care and services (if provided in or after the third month before the month in which the recipient makes application for assistance) for individuals, and, with respect to physicians’ or dentists’ services, at the option of the State, to individuals [not receiving aid or assistance under the State’s plan approved under title I, X, XIV, or XVI, or part A of title IV, who are] *who are not receiving assistance to needy families with children as defined in section 405(b) or assistance for the aged, blind, and disabled under title XX, or with respect to whom payments for foster care are not being made in accordance with section 406, who are—*

(i) under the age of 21,

[(ii) relatives specified in section 406(b) (1) with whom a child is living if such child, except for section 406(a) (2), is (or would, if needy, be) a dependent child under part A of title IV,]

*(ii) members of a family, as described in section 2155(a), except a family in which both parents of the child or children are present, neither parent is incapacitated, and the male parent is not unemployed,*

(iii) 65 years of age or older,

[(iv) blind,

[(v) 18 years of age or older and permanently and totally disabled, or]

*(iv) blind as defined in section 2014(a) (2),*

*(v) disabled as defined in section 2014(a) (3), or*

(vi) persons essential (as described in the second sentence of this subsection) to individuals receiving [aid or assistance under State plans approved under title I, X, XIV, or XVI,] *benefits under title XX,*

but whose income and resources are insufficient to meet all of such cost—

(1) inpatient hospital services (other than services in an institution for tuberculosis or mental diseases);

(2) outpatient hospital services;

(3) other laboratory and X-ray services;

(4) (A) skilled nursing home services (other than services in an institution for tuberculosis or mental diseases) for individuals 21 years of age or older; (B) effective July 1, 1969, such early and periodic screening and diagnosis of individuals who are eligible under the plan and are under the age of 21 to ascertain their physical or mental defects, and such health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby, as may be provided in regulations of the Secretary;

(5) physicians' services, whether furnished in the office, the patient's home, a hospital, or a skilled nursing home, or elsewhere;

(6) medical care, or any other type of remedial care recognized under State law, furnished by licensed practitioners within the scope of their practice as defined by State law;

(7) home health care services;

(8) private duty nursing services;

(9) clinic services;

(10) dental services;

(11) physical therapy and related services;

(12) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

(13) other diagnostic, screening, preventive, and rehabilitative services;

(14) inpatient hospital services and skilled nursing home services for individuals 65 years of age or over in an institution for tuberculosis or mental diseases; **[and]**

(15) any other medical care, and any other type of remedial care recognized under State law, specified by the Secretary; except that such term does not include—

(A) any such payments with respect to care or services for any individual who is an inmate of a public institution (except as a patient in a medical institution); or

(B) any such payments with respect to care or services for any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis or mental diseases; *and*

(16) *intermediate care facility services (other than such services in an institution for tuberculosis or mental diseases) for individuals who are determined, in accordance with section 1902(a)(33)(A), to be in need of such care;*

For purposes of clause (vi) of the preceding sentence, a person shall be considered essential to another individual if such person is the spouse of and is living with such individual, the needs of such person are taken into account in determining the amount of **[aid or assistance furnished to such individual (under a State plan approved under title I, X, XIV, or XVI), and such person is determined, under such a State plan,]** *benefits paid to such indi-*

*vidual under title XX, and such person is determined to be essential to the well being of such individual.*

(b) The term "Federal medical assistance percentage" for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 45 per centum as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii; except that (1) the Federal medical assistance percentage shall in no case be less than 50 per centum or more than 83 per centum, and (2) the Federal medical assistance percentage for Puerto Rico, the the Virgin Islands, and Guam shall be 50 per centum. The Federal medical assistance percentage for any State shall be determined and promulgated in accordance with the provisions of subparagraph (B) of section 1101(a)(8). [except that the Secretary shall promulgate such percentage as soon as possible after the enactment of this title, which promulgation shall be conclusive for each of the six quarters in the period beginning January 1, 1966, and ending with the close of June 30, 1967.]

(c) *For purposes of this title the term "intermediate care facility" means an institution or distinct part thereof which (1) is licensed under State law to provide, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing home is designed to provide, but who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities, (2) meets such standards prescribed by the Secretary as he finds appropriate for the proper provision of such care, and (3) meets such standards of safety and sanitation as are applicable to nursing homes under State law. The term "intermediate care facility" also includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts, but only with respect to institutional services deemed appropriate by the State. With respect to services furnished to individuals under age 65, the term "intermediate care facility" shall not include, except as provided in subsection (d), any public institution or distinct part thereof for mental diseases or mental defects.*

(d) *The term "intermediate care facility services" may include services in a public institution (or distinct part thereof) for the mentally retarded or persons with related conditions if—*

(1) *the primary purpose of such institution (or distinct part thereof) is to provide health or rehabilitative services for mentally retarded individuals and which meet such standards as may be prescribed by the Secretary;*

(2) *the mentally retarded individual with respect to whom a request for payment is made under a plan approved under this title is receiving active treatment under such a program; and*

(3) *the State or political subdivision responsible for the operation of such institution has agreed that the non-Federal expenditures with respect to patients in such institution (or distinct part thereof) will not be reduced because of payments made under this title.*

### Advisory Council on Medical Assistance

**Sec. 1906.** For the purpose of advising the Secretary on matters of general policy in the administration of this title (including the relationship of this title and title XVIII) and making recommendations for improvements in such administration, there is hereby created a Medical Assistance Advisory Council which shall consist of twenty-one persons, not otherwise in the employ of the United States, appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The Secretary shall from time to time appoint one of the members to serve as Chairman. The members shall include representatives of State and local agencies and nongovernmental organizations and groups concerned with health, and of consumers of health services, and a majority of the membership of the Advisory Council shall consist of representatives of consumers of health services. Each member shall hold office for a term of four years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and except that the terms of office of the members first taking office shall expire, as designated by the Secretary at the time of appointment, five at the end of the first year, five at the end of the second year, five at the end of the third year, and six at the end of the fourth year after the date of appointment. A member shall not be eligible to serve continuously for more than two terms. The Secretary may, at the request of the Council or otherwise, appoint such special advisory professional or technical committees as may be useful in carrying out this title. Members of the Advisory Council and members of any such advisory or technical committee, while attending meetings or conferences thereof or otherwise serving on business of the Advisory Council or of such committee, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding \$100 per day, including travel time, and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently. The Advisory Council shall meet as frequently as the Secretary deems necessary. Upon request of five or more members, it shall be the duty of the Secretary to call a meeting of the Advisory Council.

### Observance of Religious Beliefs

**Sec. 1907.** Nothing in this title shall be construed to require any State which has a plan approved under this title to compel any person to undergo any medical screening, examination, diagnosis, or treatment or to accept any other health care or services provided under such plan for any purpose (other than for the purpose of discovering and preventing the spread of infection or contagious disease or for the purpose of protecting environmental health), if such person objects (or, in case such person is a child, his parent or guardian objects) thereto on religious grounds.

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**State Programs for Licensing of Administrators of Nursing Homes**

**Sec. 1908.** (a) For purposes of section 1902(a)(29), a "State program for licensing of administrators of nursing homes" is a program which provides that no nursing home within the State may operate except under the supervision of an administrator licensed in the manner provided in this section.

(b) Licensing of nursing home administrators shall be carried out by the agency of the State responsible for licensing under the healing arts licensing act of the State, or, in the absence of such act or such an agency, a board representative of the professions and institutions concerned with care of chronically ill and infirm aged patients and established to carry out the purposes of this section.

(c) It shall be the function and duty of such agency or board to—

(1) develop, impose, and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to insure that nursing home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;

(2) develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;

(3) issue licenses to individuals determined, after the application of such techniques, to meet such standards, and revoke or suspend licenses previously issued by the board in any case where the individual holding any such license is determined substantially to have failed to conform to the requirements of such standards;

(4) establish and carry out procedures designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards;

(5) receive, investigate, and take appropriate action with respect to, any charge or complaint filed with the board to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements of such standards; and

(6) conduct a continuing study and investigation of nursing homes and administrators of nursing homes within the State with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes who have been licensed as such.

(d) *No State shall be considered to have failed to comply with the provisions of section 1902(a)(29) because the agency or board of such State (established pursuant to subsection (b)) shall have granted any waiver, with respect to any individual who, during all of the three calendar years immediately preceding the calendar year in which the requirements prescribed in section 1902(a)(29) are first met by the State, has served as a nursing home administrator, of any of the standards developed, imposed, and enforced by such agency or board pursuant to subsection (c). No State shall be considered to have failed to comply with the provisions*



of section 1902(a)(29) because the agency or board of such State (established pursuant to subsection (b)) shall have granted any waiver, with respect to any individual who during all of the calendar year immediately preceding the calendar year in which the requirements prescribed in section 1902(a)(29) are first met by the State, has served as a nursing home administrator, of any of the standards developed, imposed, and enforced by such board pursuant to [subsection (b)(1)] subsection (c)(1) other than such standards as relate to good character or suitability if—

(1) such waiver is for a period which ends after being in effect for two years or on June 30, 1972, whichever is earlier, and

(2) there is provided in the State (during all of the period for which waiver is in effect), a program of training and instruction designed to enable all individuals, with respect to whom any such waiver is granted, to attain the qualifications necessary in order to meet such standards.

(e)(1) There are hereby authorized to be appropriated for fiscal year 1968 and the four succeeding fiscal years such sums as may be necessary to enable the Secretary to make grants to States for the purpose of assisting them in instituting and conducting programs of training and instruction of the type referred to in subsection (d)(2).

(2) No grant with respect to any such program shall exceed 75 per centum of the reasonable and necessary cost, as determined by the Secretary, of instituting and conducting such program.

(f)(1) For the purpose of advising the Secretary and the States in carrying out the provisions of this section, there is hereby created a National Advisory Council on Nursing Home Administration which shall consist of nine persons, not otherwise in the employ of the United States, appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The Secretary shall from time to time appoint one of the members to serve as Chairman. The members shall include, but not be limited to, representatives of State health officers, State welfare directors, nursing home administrators, and university programs in public health or medical care administration.

(2) In addition to the function stated in paragraph (1) of this subsection, it shall be the function and duty of the Council (A) to study and identify the core of knowledge that should constitute minimally the training in the field of institutional administration which should qualify an individual to serve as a nursing home administrator; (B) to study and identify the experience in the field of institutional administration that a nursing home administrator should be required to possess; (C) to study and develop model techniques for determining whether an individual possesses such qualifications; (D) to study and develop model criteria for granting waivers under the provisions of subsection (d); (E) to study and develop suggested programs of training referred to in subsection (d); (F) to study, develop, and recommend programs of training and instruction for those desiring to pursue a career in nursing home administration; (G) to complete the functions in (A) through (E) above by July 1, 1969, and submit a written report to the Secretary which report shall be submitted to the States to assist them in carrying out the provisions of this section.

(3) Members of the Council, while attending meetings or conferences thereof or otherwise serving on business of the Council shall be

entitled to receive compensation at rates fixed by the Secretary, but not exceeding \$100 per day, including travel time, and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(4) The Secretary may at the request of the Council engage such technical assistance as may be required to carry out its functions; and the Secretary shall, in addition, make available to the Council such secretarial, clerical, and other assistance and such pertinent data obtained and prepared by the Department of Health, Education, and Welfare as the Council may require to carry out its functions.

(5) The Council shall be appointed by the Secretary prior to July 1, 1968, and shall cease to exist as of [December 31, 1971.] 30 days after the date of the enactment of the Social Security Amendments of 1971.

(g) As used in this section, the term—

(1) "nursing home" means any institution or facility defined as such for licensing purposes under State law, or, if State law does not employ the term nursing home, the equivalent term or terms as determined by the Secretary, but does not include a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts; and

(2) "nursing home administrator" means any individual who is charged with the general administration of a nursing home whether or not such individual has an ownership interest in such home and whether or not his functions and duties are shared with one or more other individuals.

### Penalties

**Sec. 1909.** (a) *Whoever—*

(1) *knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under a State plan approved under this title,*

(2) *at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to such benefit or payment,*

(3) *having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment of any other individual in whose behalf he has applied for or is receiving such benefit or payment, conceals or fails to disclose such event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized, or*

(4) *having made application to receive any such benefit or payment for the use and benefit of another and having received it, knowingly and willfully converts such benefit or payment or any part thereof to a use other than for the use and benefit of such other person,*

*shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$10,000 or imprisoned for not more than one year, or both.*

(b) *Whoever furnishes items or services to an individual for which payment is or may be made in whole or in part out of Federal funds under a*

*State plan approved under this title and who solicits, offers, or receives any—*

*(1) kickback or bribe in connection with the furnishing of such items or services or the making or receipt of such payment, or*

*(2) rebate of any fee or charge for referring any such individual to another person for the furnishing of such items or services*

*shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$10,000 or imprisoned for not more than one year, or both.*

*(c) Whoever knowingly and willfully makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to the conditions or operation of any institution or facility in order that such institution or facility may qualify as a hospital, skilled nursing home, intermediate care facility, or home health agency (as those terms are employed in this title) shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$2,000 or imprisoned for not more than 6 months, or both.*

## TITLE XX—ASSISTANCE FOR THE AGED, BLIND, AND DISABLED

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### Purpose; Appropriations

*SEC. 2001. For the purpose of establishing a national program to provide financial assistance to needy individuals who have attained age 65 or are blind or disabled, there are authorized to be appropriated sums sufficient to carry out this title.*

### **Basic Eligibility for Benefits**

*SEC. 2002. Every aged, blind, or disabled individual who is determined under part A to be eligible on the basis of his income and resources shall, in accordance with and subject to the provisions of this title, be paid benefits by the Secretary of Health, Education, and Welfare.*

#### **Part A—Determination of Benefits**

#### **Eligibility For And Amount of Benefits**

##### **Definition of Eligible Individual**

*SEC. 2011. (a) (1) Each aged, blind, or disabled individual who does not have an eligible spouse and—*

*(A) whose income, other than income excluded pursuant to section 2012(b), is at a rate of not more than—*

*(i) \$780 for the 6-month period ending December 31, 1972,*

*(ii) \$780 for the 6-month period ending June 30, and \$840 for the 6-month period ending December 31, in the calendar year 1973,*

*(iii) \$840 for the 6-month period ending June 30, and \$900 for the 6-month period ending December 31, in the calendar year 1974, or*

*(iv) \$1,800 for the calendar year 1975 or any calendar year thereafter, and*

*(B) whose resources, other than resources excluded pursuant to section 2013(a), are not more than \$1,500, shall be an eligible individual for purposes of this title.*

*(2) Each aged, blind, or disabled individual who has an eligible spouse and—*

*(A) whose income (together with the income of such spouse), other than income excluded pursuant to section 2012(b), is at a rate of not more than—*

*(i) \$1,170 for the 6-month period ending December 31, 1972,*

*(ii) \$1,170 for the 6-month period ending June 30, and \$1,200 for the 6-month period ending December 31, in the calendar year 1973, or*

*(iii) \$2,400 for the calendar year 1974 or any calendar year thereafter, and*

*(B) whose resources (together with the resources of such spouse), other than resources excluded pursuant to section 2013(a), are not more than \$1,500,*

*shall be an eligible individual for purposes of this title.*

##### **Amount of Benefits**

*(b) (1) The benefit under this title for an individual who does not have an eligible spouse shall be payable at the rate of—*

*(A) \$780 for the 6-month period ending December 31, 1972,*

(B) \$780 for the 6-month period ending June 30, and \$840 for the 6-month period ending December 31, in the calendar year 1973,

(C) \$840 for the 6-month period ending June 30, and \$900 for the 6-month period ending December 31, in the calendar year 1974, and

(D) \$1,800 for the calendar year 1975 or any calendar year thereafter,

reduced by the amount of income, not excluded pursuant to section 2012(b), of such individual.

(2) The benefit under this title for an individual who has an eligible spouse shall be payable at the rate of—

(A) \$1,170 for the 6-month period ending December 31, 1972,

(B) \$1,170 for the 6-month period ending June 30, and \$1,200 for the 6-month period ending December 31, in the calendar year 1973, and

(C) \$2,400 for the calendar year 1974 or any calendar year thereafter,

reduced by the amount of income, not excluded pursuant to section 2012(b), of such individual and spouse.

#### Period for Determination of Benefits

(c) (1) An individual's eligibility for benefits under this title and the amount of such benefits shall be determined for each quarter of a calendar year. Eligibility for and the amount of such benefits for any quarter shall be redetermined at such time or times as may be provided by the Secretary, such redetermination to be effective prospectively.

(2) The Secretary shall by regulation prescribe the cases in which and extent to which the amount of a benefit under this title for any quarter shall be reduced by reason of time elapsed since the beginning of such quarter and before the date of filing of the application for the benefit.

(3) For purposes of this subsection an application shall be considered to have been filed on the first day of the month in which it was actually filed.

#### Special Limits on Gross Income

(d) The Secretary may prescribe the circumstances under which, consistently with the purposes of this title, the gross income from a trade or business (including farming) will be considered sufficiently large to make an individual ineligible for benefits under this title. For purposes of this subsection, the term "gross income" has the same meaning as when used in chapter 1 of the Internal Revenue Code of 1954.

#### Limitation on Eligibility of Certain Individuals

(e) (1) (A) Except as provided in subparagraph (B), no person shall be an eligible individual or eligible spouse for purposes of this title with respect to any month if throughout such month he is an inmate of a public institution.

(B) In any case where an eligible individual or his eligible spouse (if any) is, throughout any month, in a hospital, extended care facility, nursing home, or intermediate care facility receiving payments (with respect to such individual or spouse) under a State plan approved

under title XIX, the benefit under this title for such individual for such month shall be payable—

(i) at a rate not in excess of \$300 per year (reduced by the amount of any income not excluded pursuant to section 2012(b)) in the case of an individual who does not have an eligible spouse;

(ii) at a rate not in excess of the sum of the applicable rate specified in subsection (b)(1) and the rate of \$300 per year (reduced by the amount of any income not excluded pursuant to section 2012(b)) in the case of an individual who has an eligible spouse, if only one of them is in such a hospital, home, or facility throughout such month; and

(iii) at a rate not in excess of \$600 per year (reduced by the amount of any income not excluded pursuant to section 2012(b)) in the case of an individual who has an eligible spouse, if both of them are in such a hospital, home, or facility throughout such month.

(2) No person shall be an eligible individual or eligible spouse for purposes of this title if, after notice to such person by the Secretary that it is likely that such person is eligible for any payments of the type enumerated in section 2012(a)(2)(B), such person fails within 30 days to take all appropriate steps to apply for and (if eligible) obtain any such payments.

(3)(A) No person who is an aged, blind, or disabled individual solely by reason of disability (as determined under section 2014(a)(3)) shall be an eligible individual or eligible spouse for purposes of this title with respect to any month if such disability is determined by the Secretary to be the result in whole or in part of drug abuse or alcohol abuse unless such person is undergoing any treatment that may be appropriate for such abuse at an institution or facility approved for purposes of this paragraph by the Secretary (so long as such treatment is available) and demonstrates that he is complying with the terms, conditions, and requirements of such treatment and with requirements imposed by the Secretary under subparagraph (B).

(B) The Secretary shall provide for the monitoring and testing of all individuals who are receiving benefits under this title and who as a condition of such benefits are required to be undergoing treatment and complying with the terms, conditions, and requirements thereof as described in subparagraph (A), in order to assure such compliance and to determine the extent to which the imposition of such requirement is contributing to the achievement of the purposes of this title. The Secretary shall annually submit to the Congress a full and complete report on his activities under this paragraph.

(C) As used in subparagraph (A), the term "drug abuse" means abuse of a controlled substance within the meaning of section 102 of the Controlled Substances Act; and the term "alcohol abuse" means alcohol abuse or alcoholism within the meaning of section 247 of the Community Mental Health Centers Act.

#### **Suspension of Payments to Individuals Who Are Outside the United States**

(f) Notwithstanding any other provision of this title, no individual shall be considered an eligible individual for purposes of this title for any month during all of which such individual is outside the United

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*States (and no person shall be considered the eligible spouse of an individual for purposes of this title with respect to any month during all of which such person is outside the United States). For purposes of the preceding sentence, after an individual has been outside the United States for any period of 30 consecutive days, he shall be treated as remaining outside the United States until he has been in the United States for a period of 30 consecutive days.*

**Puerto Rico, the Virgin Islands, and Guam**

*(g) For special provisions applicable to Puerto Rico, the Virgin Islands, and Guam, see section 1108(e).*

**Income**

**Meaning of Income**

**SEC. 2012.** *(a) For purposes of this title, income means both earned income and unearned income; and—*

*(1) earned income means only—*

*(A) wages as determined under section 203(f)(5)(C); and*

*(B) net earnings from self-employment, as defined in section 211 (without the application of the second and third sentences following clause (C) of subsection (a)(9), and the last paragraph of subsection (a)), including earnings for services described in paragraphs (4), (5), and (6) of subsection (c); and*

*(2) unearned income means all other income, including—*

*(A) support and maintenance furnished in cash or kind; except that in the case of any individual (and his eligible spouse, if any) living in another person's household and receiving support and maintenance in kind from such person, the dollar amounts otherwise applicable to such individual (and spouse) as specified in subsections (a) and (b) of section 2011 shall be reduced by 33½ percent in lieu of including such support and maintenance in the unearned income of such individual (and spouse) as otherwise required by this subparagraph;*

*(B) any payments received as an annuity, pension, retirement, or disability benefit, including veterans' compensation and pensions, workmen's compensation payments, old-age, survivors, and disability insurance benefits, railroad retirement annuities and pensions, and unemployment insurance benefits;*

*(C) prizes and awards;*

*(D) the proceeds of any life insurance policy to the extent that they exceed the amount expended by the beneficiary for purposes of the insured individual's last illness and burial or \$1,500, whichever is less;*

*(E) gifts (cash or otherwise), support and alimony payments, and inheritances; and*

*(F) rents, dividends, interest, and royalties.*



**Exclusions From Income**

(b) In determining the income of an individual (and his eligible spouse) there shall be excluded—

(1) subject to limitations (as to amount or otherwise) prescribed by the Secretary, if such individual is a child who is, as determined by the Secretary, a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare him for gainful employment, the earned income of such individual;

(2) (A) the total unearned income of such individual (and such spouse, if any) in a calendar quarter which, as determined in accordance with criteria prescribed by the Secretary, is received too infrequently or irregularly to be included, if such income so received does not exceed \$60 in such quarter, and (B) the total earned income of such individual (and such spouse, if any) in a calendar quarter which, as determined in accordance with such criteria, is received too infrequently or irregularly to be included, if such income so received does not exceed \$30 in such quarter;

(3) (A) if such individual (or such spouse) is blind (and has not attained age 65, or received benefits under this title (or aid under a State plan approved under section 1002 or 1602) for the month before the month in which he attained age 65), (i) the first \$1,020 per year (or proportionately smaller amounts for shorter periods) of earned income not excluded by the preceding paragraphs of this subsection, plus one-half of the remainder thereof, (ii) an amount equal to any expenses reasonably attributable to the earning of any income, and (iii) such additional amounts of other income, where such individual has a plan for achieving self-support approved by the Secretary, as may be necessary for the fulfillment of such plan,

(B) if such individual (or such spouse) is disabled but not blind (and has not attained age 65, or received benefits under this title (or aid under a State plan approved under section 1402, or 1602) for the month before the month in which he attained age 65); (i) the first \$1,020 per year (or proportionately smaller amounts for shorter periods) of earned income not excluded by the preceding paragraphs of this subsection, plus one-half of the remainder thereof, and (ii) such additional amounts of other income, where such individual has a plan for achieving self-support approved by the Secretary, as may be necessary for the fulfillment of such plan, or

(C) if such individual (or such spouse) has attained age 65 and is not included under subparagraph (A) or (B), the first \$720 per year (or proportionately smaller amounts for shorter periods) of earned income not excluded by the preceding paragraphs of this subsection, plus one-third of the remainder thereof;

(4) subject to section 2016, any assistance (except veterans' pensions) which is based on need and furnished by any State or political subdivision of a State or any Federal agency, or by any private agency or organization exempt from taxation under section 501(a) of the Internal Revenue Code of 1954 as an organization described in section 501(a) (2) or (4) of such Code;

(5) any portion of any grant, scholarship, or fellowship received for use in paying the cost of tuition and fees at any educational (including technical or vocational education) institution;

(6) home produce of such individual (or spouse) utilized by the household for its own consumption;

(7) if such individual is a child, one-third of any payment for his support received from an absent parent; and

(8) any amounts received for the foster care of a child who is not an eligible individual but who is living in the same home as such individual and was placed in such home by a public or non-profit private child-placement or child-care agency.

(c) For provisions relating to additional disregarding of income, see section 1007 of the Social Security Amendments of 1969 and section 2016(c)(1) of this Act.

## Resources

### Exclusions From Resources

SEC. 2013. (a) In determining the resources of an individual (and his eligible spouse, if any) there shall be excluded—

(1) the home, to the extent that its value does not exceed such amount as the Secretary determines to be reasonable;

(2) household goods and personal effects, to the extent that their total value does not exceed such amount as the Secretary determines to be reasonable;

(3) other property which, as determined in accordance with and subject to limitations prescribed by the Secretary, is so essential to the means of self-support of such individual (and such spouse) as to warrant its exclusion; and

(4) such resources of an individual who is blind or disabled and who has a plan for achieving self-support approved by the Secretary, as may be necessary for the fulfillment of such plan.

In determining the resources of an individual (or eligible spouse) an insurance policy shall be taken into account only to the extent of its cash surrender value; except that if the total face value of all life insurance policies on any person is \$1,500 or less, no part of the value of any such policy shall be taken into account.

### Disposition of Resources

(b) The Secretary shall prescribe the period or periods of time within which, and the manner in which, various kinds of property must be disposed of in order not to be included in determining an individual's eligibility for benefits. Any portion of the individual's benefits paid for any such period shall be conditioned upon such disposal; and any benefits so paid shall (at the time of the disposal) be considered overpayments to the extent they would not have been paid had the disposal occurred at the beginning of the period for which such benefits were paid.

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### Meaning of Terms

#### Aged, Blind, or Disabled Individual

SEC. 2014. (a) (1) For purposes of this title, the term "aged, blind, or disabled individual" means an individual who—

(A) is 65 years of age or older, is blind (as determined under paragraph (2)), or is disabled (as determined under paragraph (3)), and

(B) is a resident of the United States, and is either (i) a citizen or (ii) an alien lawfully admitted for permanent residence.

(2) An individual shall be considered to be blind for purposes of this title if he has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of the first sentence of this subsection as having a central visual acuity of 20/200 or less. An individual shall also be considered to be blind for purposes of this title if he is blind as defined under a State plan approved under title X or XVI as in effect prior to the enactment of this subsection and received aid under such plan (on the basis of blindness) for June 1972, so long as he is continuously blind as so defined.

(3) (A) An individual shall be considered to be disabled for purposes of this title if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months (or, in the case of a child under the age of 18, if he suffers from any medically determinable physical or mental impairment of comparable severity). An individual shall also be considered to be disabled for purposes of this title if he is permanently and totally disabled as defined under a State plan approved under title XIV or XVI as in effect prior to the enactment of this subsection and received aid under such plan (on the basis of disability) for June 1972, so long as he is continuously disabled as so defined.

(B) For purposes of subparagraph (A) (except with respect to a child under the age of 18), an individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

(C) For purposes of this paragraph, a physical or mental impairment is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

(D) *The Secretary shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. Notwithstanding the provisions of subparagraph (B), an individual whose services or earnings meet such criteria, except for purposes of paragraph (4), shall be found not to be disabled.*

(4) (A) *For purposes of this title, any services rendered during a period of trial work (as defined in subparagraph (B)) by an individual who is an aged, blind, or disabled individual solely by reason of disability (as determined under paragraph (3) of this subsection) shall be deemed not to have been rendered by such individual in determining whether his disability has ceased in a month during such period. As used in this paragraph, the term "services" means activity which is performed for remuneration or gain or is determined by the Secretary to be of a type normally performed for remuneration or gain.*

(B) *The term "period of trial work", with respect to an individual who is an aged, blind, or disabled individual solely by reason of disability (as determined under paragraph (3) of this subsection), means a period of months beginning and ending as provided in subparagraphs (C) and (D).*

(C) *A period of trial work for any individual shall begin with the month in which he becomes eligible for benefits under this title on the basis of his disability; but no such period may begin for an individual who is eligible for benefits under this title on the basis of a disability if he has had a previous period of trial work while eligible for benefits on the basis of the same disability.*

(D) *A period of trial work for any individual shall end with the close of whichever of the following months is the earlier:*

(i) *the ninth month, beginning on or after the first day of such period, in which the individual renders services (whether or not such nine months are consecutive); or*

(ii) *the month in which his disability (as determined under paragraph (3) of this subsection) ceases (as determined after the application of subparagraph (A) of this paragraph).*

#### **Eligible Spouse**

(b) *For purposes of this title, the term "eligible spouse" means an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual. If two aged, blind, or disabled individuals are husband and wife as described in the preceding sentence, only one of them may be an "eligible individual" within the meaning of section 2011(a).*

#### **Definition of Child**

(c) *For purposes of this title, the term "child" means an individual who is neither married nor (as determined by the Secretary) the head of a household, and who is (1) under the age of eighteen, or (2) under the age of twenty-two and (as determined by the Secretary) a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare him for gainful employment.*

### **Determination of Marital Relationships**

*(d) In determining whether two individuals are husband and wife for purposes of this title, appropriate State law shall be applied; except that—*

*(1) if a man and woman have been determined to be husband and wife under section 216(h)(1) for purposes of title II they shall be considered (from and after the date of such determination or the date of their application for benefits under this title, whichever is later) to be husband and wife for purposes of this title, or*

*(2) if a man and woman are found to be holding themselves out to the community in which they reside as husband and wife, they shall be so considered for purposes of this title notwithstanding any other provision of this section.*

### **United States**

*(e) For purposes of this title, the term "United States", when used in a geographical sense, means the States and the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.*

### **Income and Resources of Individuals Other Than Eligible Individuals and Eligible Spouses**

*(f)(1) For purposes of determining eligibility for and the amount of benefits for any individual who is married and whose spouse is living with him in the same household but is not an eligible spouse, such individual's income and resources shall be deemed to include any income and resources of such spouse, whether or not available to such individual, except to the extent determined by the Secretary to be inequitable under the circumstances.*

*(2) For purposes of determining eligibility for and the amount of benefits for any individual who is a child under age 21, such individual's income and resources shall be deemed to include any income and resources of a parent of such individual (or the spouse of such a parent) who is living in the same household as such individual, whether or not available to such individual, except to the extent determined by the Secretary to be inequitable under the circumstances.*

### **Rehabilitation Services for Blind and Disabled Individuals**

*SEC. 2015. (a) In the case of any blind or disabled individual who—*

*(1) has not attained age 65, and*

*(2) is receiving benefits (or with respect to whom benefits are paid) under this title,*

*the Secretary shall make provision for referral of such individual to the appropriate State agency administering the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act, and (except in such cases as he may determine) for a review not less often than quarterly of such individual's blindness or disability and his need for and utilization of the rehabilitation services made available to him under such plan.*

*(b) Every individual with respect to whom the Secretary is required to make provision for referral under subsection (a) shall ac-*

*cept such rehabilitation services as are made available to him under the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act; and the Secretary is authorized to pay to the State agency administering or supervising the administration of such State plan the costs incurred in the provision of such services to individuals so referred.*

*(c) No individual shall be an eligible individual or eligible spouse for purposes of this title if he refuses without good cause to accept vocational rehabilitation services for which he is referred under subsection (a).*

### **Optional State Supplementation**

*SEC. 2016. (a) Any cash payments which are made by a State (or political subdivision thereof) on a regular basis to individuals who are receiving benefits under this title or who would but for their income be eligible to receive benefits under this title, as assistance based on need in supplementation of such benefits (as determined by the Secretary), shall be excluded under section 2012(b)(4) in determining the income of such individuals for purposes of this title only if (1) the Secretary and such State enter into an agreement which satisfies subsection (b) and which may at the option of the State provide that the Secretary will, on behalf of such State (or subdivision), make such supplementary payments to all such individuals, and (2) such supplementary payments are made to such individuals in accordance with such agreement.*

*(b) Any agreement between the Secretary and a State entered into under subsection (a) shall provide—*

*(1) that in determining the eligibility of any individual for supplementary payments on the basis of his income, all the provisions of section 2012(b) will apply, except that with respect to any quarter—*

*(A) if benefits are paid to such individual for such quarter under this title, such benefits will not be excluded from income in applying paragraph (4) of such section, and*

*(B) if no benefits are paid to such individual for such quarter under this title, the requirement of this paragraph shall not apply with respect to such individual; except that the supplementary payment shall not be reduced, on account of income in excess of the maximum amount which such individual could have and still receive such a benefit, by an amount greater than such excess,*

*and, if the agreement provides that the Secretary will, on behalf of the State (or political subdivision), make the supplementary payments to individuals receiving benefits under this title, shall also provide—*

*(2) that such payments will be made (subject to subsection (c)(2)) to all individuals residing in such State (or subdivision) who are receiving benefits under this title, and*

*(3) such other rules with respect to eligibility for or amount of the supplementary payments, and such procedural or other general administrative provisions, as the Secretary finds necessary (subject to subsection (c)) to achieve efficient and effective admin-*

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istration of both the program which he conducts under this title and the optional State supplementation.

(c) (1) Any State (or political subdivision), in determining the eligibility of any individual for supplementary payments described in subsection (a), may disregard up to \$7.50 of any income in addition to other amounts which it is required or permitted to disregard under this section in determining such eligibility, and may include a provision to that effect in the State's agreement with the Secretary under subsection (a).

(2) Any State (or political subdivision) making supplementary payments described in subsection (a) may at its option impose as a condition of eligibility for such payments, and include in the State's agreement with the Secretary under such subsection, a residence requirement which excludes individuals who have resided in the State (or political subdivision) for less than a minimum period prior to application for such payments.

(d) Any State which has entered into an agreement with the Secretary under this section which provides that the Secretary will, on behalf of the State (or political subdivision), make the supplementary payments to individuals who are receiving benefits under this title (or who would but for their income be eligible to receive such benefits), shall, subject to section 503 of the Social Security Amendments of 1971, at such times and in such installments as may be agreed upon between the Secretary and such State, pay to the Secretary an amount equal to the expenditures made by the Secretary as such supplementary payments.

## Part B—Procedural and General Provisions

### Payments and Procedures

#### Payment of Benefits

SEC. 2031. (a) (1) Benefits under this title shall be paid at such time or times and in such installments as will best effectuate the purposes of this title, as determined under regulations (and may in any case be paid less frequently than monthly where the amount of the monthly benefit would not exceed \$10).

(2) Payments of the benefit of any individual may be made to any such individual or to his eligible spouse (if any) or partly to each, or, if the Secretary deems it appropriate, to any other person (including an appropriate public or private agency) who is interested in or concerned with the welfare of such individual (or spouse).

(3) The Secretary may by regulation establish ranges of incomes within which a single amount of benefits under this title shall apply.

(4) The Secretary—

(A) may make, to any individual initially applying for benefits under this title who is presumptively eligible for such benefits and who is faced with financial emergency, a cash advance against such benefits in an amount not exceeding \$100 and

(B) may pay benefits under this title to an individual applying for such benefits on the basis of disability for a period not exceeding 3 months prior to the determination of such individual's disability, if such individual is presumptively disabled and is deter-

*mined to be otherwise eligible for such benefits, and any benefits so paid prior to such determination shall in no event be considered overpayments for purposes of subsection (b).*

*(5) Payment of the benefit of any individual who is an aged, blind, or disabled individual solely by reason of blindness (as determined under section 2014(a)(2)) or disability (as determined under section 2014(a)(3)), and who ceases to be blind or to be under such disability, shall continue (so long as such individual is otherwise eligible) through the second month following the month in which such blindness or disability ceases.*

#### **Overpayments and Underpayments**

*(b) Whenever the Secretary finds that more or less than the correct amount of benefits has been paid with respect to any individual, proper adjustment or recovery shall, subject to the succeeding provisions of this subsection, be made by appropriate adjustments in future payments to such individual or by recovery from or payment to such individual or his eligible spouse (or by recovery from the estate of either). The Secretary shall make such provision as he finds appropriate in the case of payment of more than the correct amount of benefits with respect to an individual with a view to avoiding penalizing such individual or his eligible spouse who was without fault in connection with the overpayment, if adjustment or recovery on account of such overpayment in such case would defeat the purposes of this title, or be against equity or good conscience, or (because of the small amount involved) impede efficient or effective administration of this title.*

#### **Hearings and Review**

*(c) (1) The Secretary shall provide reasonable notice and opportunity for a hearing to any individual who is or claims to be an eligible individual or eligible spouse and is in disagreement with any determination under this title with respect to eligibility of such individual for benefits, or the amount of such individual's benefits, if such individual requests a hearing on the matter in disagreement within thirty days after notice of such determination is received.*

*(2) Determination on the basis of such hearing, except to the extent that the matter in disagreement involves the existence of a disability (within the meaning of section 2014(a)(3)), shall be made within ninety days after the individual requests the hearing as provided in paragraph (1).*

*(3) The final determination of the Secretary after a hearing under paragraph (1) shall be subject to judicial review as provided in section 205(g) to the same extent as the Secretary's final determinations under section 205; except that the determination of the Secretary after such hearing as to any fact shall be final and conclusive and not subject to review by any court.*

#### **Procedures; Prohibition of Assignments; Representation of Claimants**

*(d) (1) The provisions of section 207 and subsections (a), (d), (e), and (f) of section 205 shall apply with respect to this part to the same extent as they apply in the case of title II.*



(2) *To the extent the Secretary finds it will promote the achievement of the objectives of this title, qualified persons may be appointed to serve as hearing examiners in hearings under subsection (c) without meeting the specific standards prescribed for hearing examiners by or under subchapter II of chapter 5 of title 5, United States Code.*

(3) *The Secretary may prescribe rules and regulations governing the recognition of agents or other persons, other than attorneys, as hereinafter provided, representing claimants before the Secretary under this title, and may require of such agents or other persons, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. An attorney in good standing who is admitted to practice before the highest court of the State, Territory, District, or insular possession of his residence or before the Supreme Court of the United States or the inferior Federal courts, shall be entitled to represent claimants before the Secretary. The Secretary may, after due notice and opportunity for hearing, suspend or prohibit from further practice before him any such person, agent, or attorney who refuses to comply with the Secretary's rules and regulations or who violates any provision of this paragraph for which a penalty is prescribed. The Secretary may, by rule and regulation, prescribe the maximum fees which may be charged for services performed in connection with any claim before the Secretary under this title, and any agreement in violation of such rules and regulations shall be void. Any person who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant or beneficiary under this title by word, circular, letter, or advertisement, or who shall knowingly charge or collect directly or indirectly any fee in excess of the maximum fee, or make any agreement directly or indirectly to charge or collect any fee in excess of the maximum fee, prescribed by the Secretary, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine not exceeding \$500 or by imprisonment not exceeding one year, or both.*

#### **Applications and Furnishing of Information**

(e) (1) *The Secretary shall prescribe such requirements with respect to the filing of applications, the suspension or termination of assistance, the furnishing of other data and material, and the reporting of events and changes in circumstances, as may be necessary for the effective and efficient administration of this title.*

(2) *In case of the failure by any individual to submit a report of events and changes in circumstances relevant to eligibility for or amount of benefits under this title as required by the Secretary under paragraph (1), or delay by any individual in submitting a report as so required, the Secretary (in addition to taking any other action he may consider appropriate under paragraph (1)) shall reduce any benefits which may subsequently become payable to such individual under this title by—*

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(A) \$25 in the case of the first such failure or delay,  
 (B) \$50 in the case of the second such failure or delay, and  
 (C) \$100 in the case of the third or a subsequent such failure or delay,  
 except where the individual was without fault or good cause for such failure or delay existed.

#### **Furnishing of Information by Other Agencies**

(f) The head of any Federal agency shall provide such information as the Secretary needs for purposes of determining eligibility for or amount of benefits, or verifying other information with respect thereto.

#### **Penalties for Fraud**

SEC. 2032. Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit under this title,

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to any such benefit.

(3) having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit, or (B) the initial or continued right to any such benefit of any other individual in whose behalf he has applied for or is receiving such benefit, conceals or fails to disclose such event with an intent fraudulently to secure such benefit either in a greater amount or quantity than is due or when no such benefit is authorized, or

(4) having made application to receive any such benefit for the use and benefit of another and having received it, knowingly and willfully converts such benefit or any part thereof to a use other than for the use and benefit of such other person,  
 shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

#### **Administration**

SEC. 2033. The Secretary may make such administrative and other arrangements (including arrangements for the determination of blindness and disability under section 2014 (a) (2) and (3) in the same manner and subject to the same conditions as provided with respect to disability determinations under section 221) as may be necessary or appropriate to carry out his functions under this title.

#### **Evaluation and Research; Reports**

SEC. 2034. (a) (1) The Secretary shall provide for the continuing evaluation of the program conducted under this title, including its effectiveness in achieving its goals and its impact on other related programs. The Secretary may conduct research regarding, and demonstrations of, ways to improve the effectiveness of the program conducted under this title, and in so doing may waive any requirement or limitation imposed by or pursuant to this title to the extent he deems

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*appropriate. The Secretary may, for these purposes, contract for evaluations of and research regarding such program.*

*(2) Of the sums authorized by section 2001 to be appropriated for any fiscal year, not more than \$5,000,000 shall be appropriated for purposes of paragraph (1).*

*(b) The Secretary shall, in conducting the activities provided for in subsection (a)(1), utilize the data collection, processing, and retrieval system established for use in the operation and administration of the program under this title.*

*(c) The Secretary shall make an annual report to the President and the Congress on the operation and administration of the program under this title, including an evaluation thereof in carrying out the purposes of this title and recommendations with respect thereto.*

**TITLE XXI—OPPORTUNITIES FOR FAMILIES PROGRAM  
AND FAMILY ASSISTANCE PLAN**

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**Purpose; Appropriation**

SEC. 2101. For the purpose of—

(1) providing for members of needy families with children the manpower services, training, employment, child care, family planning, and related services which are necessary to train them, prepare them for employment, and otherwise assist them in securing and retaining regular employment and having the opportunity for advancement in employment, to the end that such families will be restored to self-supporting, independent, and useful roles in their communities, and

(2) providing a basic level of financial assistance throughout the Nation to needy families with children in a manner which will encourage work, training, and self-support, improve family life, and enhance personal dignity,

there are authorized to be appropriated, for each of the five fiscal years in the period beginning July 1, 1972, and ending June 30, 1977, sums sufficient to carry out this title.

**Basic Eligibility for Benefits**

SEC. 2102. Every family which is determined under part C to be eligible on the basis of its income and resources shall, upon registration for manpower services, training, and employment by any of its members who are available for employment (as determined under section 2111) and in accordance with and subject to the other provisions of this title, be paid benefits by the Secretary of Labor under part A, or, if such family has no members who are registered for such services, training, and employment, shall be paid benefits by the Secretary of Health, Education, and Welfare under part B.

**Part A—Opportunities for Families Program****Registration of Family Members for Manpower Services, Training, and Employment**

SEC. 2111. (a) Every individual who is determined by the Secretary of Health, Education, and Welfare to be a member of an eligible

family and to be available for employment shall register with the Secretary of Labor for manpower services, training, and employment.

(b) Any individual shall be considered to be available for employment for purposes of this title unless he is determined by the Secretary of Health, Education, and Welfare to be—

(1) unable to engage in work or training by reason of illness, incapacity, or advanced age;

(2) a mother or other relative of a child under the age of three (or, until July 1, 1974, under the age of six) who is caring for such child;

(3) the mother or other female caretaker of a child, if the father or another adult male relative is in the home and not excluded by paragraph (1), (2), (4), or (5) of this subsection (unless he has failed to register as required by subsection (a), or to accept services or employment or participate in training as required by subsection (c));

(4) a child who is under the age of sixteen or meets the requirements of section 2155(b) (2); or

(5) one whose presence in the home on a substantially continuous basis is required because of the illness or incapacity of another member of the household.

An individual described in paragraph (2), (3), (4), or (5) who would, but for the preceding sentence, be required to register pursuant to subsection (a), may, if he wishes, register as provided in such subsection, and upon so registering he shall be considered as available for employment for purposes of this title.

(c) (1) Every individual who is registered as required by subsection (a) shall participate in manpower services or training, and accept and continue to participate in employment in which he is able to engage, except where good cause exists for failure to participate in such services or training or to accept and continue to participate in such employment, as provided by the Secretary of Labor.

(2) No individual shall be required by paragraph (1) to accept employment if—

(A) the position offered is vacant due directly to a strike, lock-out, or other labor dispute;

(B) the wages, hours, or other terms or conditions of the work offered are contrary to or less than those prescribed by applicable Federal, State, or local law or are less favorable to the individual than those prevailing for similar work in the locality, or the wages for the work offered are at an hourly rate of less than three-fourths of the minimum wage specified in section 6 (a) (1) of the Fair Labor Standards Act of 1938;

(C) as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization; or

(D) the individual has the demonstrated capacity, through other available training or employment opportunities, of securing work available to him that would better enable him to achieve self-sufficiency.

### Child Care and Other Supportive Services

*Sec. 2112. (a) (1) The Secretary of Labor shall make provision for the furnishing of child care services in such cases and for so long as he deems appropriate (subject to section 2179) for individuals who are currently registered pursuant to section 2111(a) or referred pursuant to section 2117(a) (or who have been so registered or referred within such period or periods of time as the Secretary of Labor may prescribe) and who need child care services in order to accept or continue to participate in manpower services, training, or employment, or vocational rehabilitation services.*

*(2) In making provision for the furnishing of child care services under this subsection, the Secretary of Labor shall, in accordance with standards established pursuant to section 2134(a), arrange for or purchase, from whatever sources may be available, all such necessary child care services, including necessary transportation. Where available, services provided through facilities developed by the Secretary of Health, Education, and Welfare shall be utilized on a priority basis.*

*(3) In cases where child care services cannot as a practical matter be made available in facilities developed by the Secretary of Health, Education, and Welfare, the Secretary of Labor may provide such services (A) by grants to public or nonprofit private agencies or contracts with public or private agencies or other persons, through such public or private facilities as may be available and appropriate (except that no such funds may be used for the construction of facilities (as defined in section 2134(b)(2)), and (B) through the assurance of such services from other appropriate sources. In addition to other grants or contracts made under clause (A) of the preceding sentence, grants or contracts under such clause may be made to or with any agency which is designated by the appropriate elected or appointed official or officials in such area and which demonstrates a capacity to work effectively with the manpower agency in such area (including provision for the stationing of personnel with the manpower team in appropriate cases). To the extent appropriate, such care for children attending school which is provided on a group or institutional basis shall be provided through arrangements with the appropriate local educational agency.*

*(4) The Secretary of Labor may require individuals receiving child care services made available under paragraph (2) or provided under paragraph (3) to pay (in accordance with the schedule or schedules prescribed under section 2134(a)) for part or all of the cost thereof, and may require (as a condition of benefits under this part) that individuals receiving child care services otherwise furnished pursuant to provision made by him under paragraph (1) shall pay for the cost of such services if such cost will be excludable under section 2153(b)(3).*

*(5) In order to promote, in a manner consistent with the purposes of this title, the effective provision of child care services, the Secretary of Labor shall assure the close cooperation of the manpower agency with the providers of child care services and shall, through the utilization of training programs and in cooperation with the Secretary of Health, Education, and Welfare, prepare persons registered pursuant to section 2111 for employment in child care facilities.*

(6) *The Secretary of Labor shall regularly report to the Secretary of Health, Education, and Welfare concerning the amount and location of the child care services which he has had to provide (and expects to have to provide) under paragraph (3) because such services were not (or will not be) available under paragraph (2).*

(7) *Of the amount appropriated to enable the Secretary of Labor to carry out his responsibilities under this subsection for any fiscal year, not less than 50 percent shall be expended by the Secretary of Labor in accordance with a formula under which the expenditures made in any State shall bear the same ratio to the total of such expenditures in all the States as the number of mothers registered under section 2111 in such State bears to the total number of mothers so registered in all the States.*

(b) (1) *The Secretary of Labor shall make provision for the furnishing of the health, vocational rehabilitation, counseling, social, and other supportive services (including physical examinations and minor medical services) which he determines under regulations to be necessary to permit an individual who has registered pursuant to section 2111(a) to undertake or continue manpower training or employment under this part.*

(2) *In addition, the Secretary of Labor shall make provision for the offering, to all appropriate members of families which include one or more individuals registered pursuant to section 2111(a), of family planning services, the acceptance of which by any such member shall be voluntary on the part of such member and shall not be a prerequisite to eligibility for or receipt of benefits under this part or otherwise affect the amount of such benefits.*

(3) *Services furnished under this subsection shall be provided in close cooperation with manpower training and employment services provided under this part. In providing services under this subsection the Secretary of Labor, to the maximum extent feasible, shall assure that such services are provided in such manner, through such means, and using such authority available under any other Act (subject to all duties and responsibilities thereunder) as will make maximum use of existing facilities, programs, and agencies.*

(4) *Of the sums authorized by section 2101 to be appropriated for the fiscal year ending June 30, 1973, not more than \$100,000,000 shall be appropriated to the Secretary of Labor to enable him to carry out his responsibilities under paragraph (1) of this subsection.*

### **Payment of Benefits**

*SEC. 2113. Every eligible family (other than a family meeting the conditions for payment of benefits under section 2131) shall, in accordance with and subject to the other provisions of this title, be paid benefits by the Secretary of Labor as provided in part C.*

### **Operation of Manpower Services, Training, and Employment Programs**

*SEC. 2114. (a) The Secretary of Labor shall develop, for each individual registered pursuant to section 2111(a), an employability plan describing the manpower services, training, and employment which the*



*individual needs in order to enable him to become self-supporting and secure and retain employment and opportunities for advancement. Employability plans under this subsection shall be developed in accordance with priorities prescribed by the Secretary of Labor, which shall give first priority to mothers and pregnant women registered pursuant to section 2111 (a) who are under nineteen years of age.*

*(b) The Secretary of Labor shall establish manpower services, training, and employment programs for individuals registered pursuant to section 2111 (a), and shall, through such programs, provide or assure the provision of manpower services, training, and employment necessary to prepare such individuals for and place them in regular employment, including—*

*(1) any of such services, training, and employment which the Secretary of Labor is authorized to provide under any other Act;*

*(2) counseling, testing, coaching, program orientation, institutional and on-the-job training, work experience, upgrading, job development, job placement, and followup services required to assist in securing and retaining employment and opportunities for advancement;*

*(3) relocation assistance, including grants, loans, and the furnishing of such services as will aid an involuntarily unemployed individual who desires to relocate to do so in an area where there is assurance of regular employment; and*

*(4) public service employment programs.*

*(c) (1) For the purpose of subsection (b) (4), a "public service employment program" is a program designed to provide employment as described in paragraph (2) for individuals who (during the period of such employment) are not otherwise able to obtain employment or to be effectively placed in training programs. Such a program shall provide employment relating to such fields as health, social service, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, public facilities, and public safety or any other field which would benefit the community, the State, or the the United States as a whole, by improving physical, social, or economic conditions.*

*(2) The Secretary of Labor shall provide for the development of public service employment programs through grants to or contracts with any public or nonprofit private agency or organization. Such programs shall be designed with a view toward—*

*(A) providing for development of employability through actual work experience; and*

*(B) enabling individuals employed under public service employment programs to move into regular public or private employment.*

*(3) Before making any grant or entering into any contract for a public service employment program under this subsection, the Secretary of Labor must receive assurances that—*

*(A) appropriate standards for health, safety, and other conditions applicable to the performance of work and training have been established and will be maintained;*

*(B) available employment opportunities will be increased and the program will not result in a reduction in the employment and labor costs of any employer or in the displacement of persons*

currently employed, including partial displacement resulting from a reduction in hours of work or wages, or employment benefits;

(C) the conditions of work, training, education, and employment are reasonable in the light of such factors as the type of work, the geographic region, and the proficiency of the participants;

(D) appropriate workmen's compensation protection is provided to all participants; and

(E) the employability of participants will be increased.

(4) Wages paid to an individual participating in a public service employment program shall be equal to the highest of—

(A) the prevailing rate of wages in the same labor market area for persons employed in similar public occupations;

(B) the applicable minimum wage rate prescribed by Federal, State, or local law; or

(C) the minimum wage specified in section 6(a) (1) of the Fair Labor Standards Act of 1938.

(5) The Secretary of Labor shall periodically (but not less frequently than once every six months) review the employment record of each individual participating in a public service employment program. On the basis of that record and any other information he may require, the Secretary of Labor shall determine the feasibility of placing such individual in regular employment or in on-the-job, institutional, or other training.

(6) The secretary of Labor shall make payments for not more than the first three years of an individual's employment in any public service employment program. Payments during the first year of such individual's employment shall not exceed 100 percent of the cost of providing such employment to such individual during such first year, payments during the second year of such individual's employment shall not exceed 75 percent of the cost of providing such employment to such individual during such second year, and payments during the third year of such individual's employment shall not exceed 50 percent of the cost of providing such employment to such individual during such third year.

(d) In order to assure an adequate supply of information concerning opportunities for employment by States and their political subdivisions, any State or political subdivision receiving Federal assistance, through a grant-in-aid or contract under this title or any other provision of law, shall provide the Secretary of Labor with complete, up-to-date listings of all employment vacancies that the State or political subdivision may have in positions or programs wholly or partially supported through such Federal assistance. The fulfillment of this requirement shall be a condition for receiving such assistance.

(e) The Secretary of Labor shall enter into agreements with the heads of other Federal agencies administering grant-in-aid programs to establish annual and multiyear goals for the employment of members of families receiving benefits under this title in employment wholly or partially supported through such Federal assistance. For the purposes of carrying out these agreements Federal agencies may provide, notwithstanding any other provision of law, that the estab-

lishment of such goals shall be a condition for receiving such assistance.

(f) Of the sums authorized by section 2101 to be appropriated for the fiscal year ending June 30, 1973—

(1) not more than \$540,000,000 shall be appropriated to the Secretary of Labor to enable him to carry out his responsibilities under subsections (a) and (b) (except subsection (b) (4)) of this section, and under section 2115, and

(2) not more than \$800,000,000 shall be appropriated to the Secretary of Labor for the public service employment program under subsection (b) (4) of this section.

### **Allowances for Individuals Participating in Training**

**Sec. 2115.** (a) (1) The Secretary of Labor shall pay to each individual who is a member of an eligible family and who is participating in manpower training under this part an incentive allowance of \$30 per month. If one or more members of a family are receiving training for which training allowances are payable under section 203 of the Manpower Development and Training Act and meet the other requirements under such section (except subsection (l) (1) thereof) for the receipt of allowances which would be in excess of the sum of such family's benefit under this part and any supplementary payment to such family under section 2156, the total of the incentive allowances per month under this section for such members shall be equal to the greater of (A) the amount of such excess or, if lower, the amount of the excess of the training allowances which would be payable under section 203 as in effect on January 1, 1971, over the sum of such family's benefit under this part and any such supplementary payment, and (B) \$30 for each such member.

(2) The Secretary of Labor shall also pay, to any member of an eligible family participating in manpower training under this part, allowances for transportation and other costs to such member which are reasonably necessary to and directly related to such member's participation in training.

(b) Allowances under this section shall be in lieu of allowances provided for participants in manpower training programs under any other Act.

(c) Subsection (a) shall not apply to any member of an eligible family who is receiving wages under a program of the Secretary of Labor or who is participating in manpower training which has the purpose of obtaining for him an undergraduate or graduate degree at a college or university.

### **Utilization of Other Programs**

**Sec. 2116.** In providing the manpower training and employment services and opportunities required by this part the Secretary of Labor, to the maximum extent feasible, shall assure that such services and opportunities are provided in such manner, through such means, and using all of such authority available to him under any other Act (and subject to all duties and responsibilities thereunder) as will further the establishment of an integrated and comprehensive manpower training

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*program involving all sectors of the economy and all levels of government.*

### **Rehabilitation Services for Incapacitated Family Members**

*SEC. 2117. (a) In the case of any individual who is a member of a family receiving benefits under this part and who is not required to register pursuant to section 2111(a) solely because of his incapacity under section 2111(b)(1), the Secretary of Labor shall make provision for referral of such individual to the appropriate State agency administering the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act, and (except in such cases as he may determine) for a review not less often than quarterly of such individual's incapacity and his need for and utilization of the rehabilitation services made available to him under such plan.*

*(b) Every individual with respect to whom the Secretary of Labor is required to make provision for referral under subsection (a) shall accept such rehabilitation services as are made available to him under the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act, except where good cause exists for failure to accept such services; and the Secretary of Labor is authorized to pay to the State agency administering or supervising the administration of such State plan the costs incurred in the provision of such services to such individuals.*

*(c) (1) The Secretary of Labor shall pay to each family member with respect to whom the Secretary of Labor is required to make provision for referral under subsection (a) and who is receiving vocational rehabilitation services pursuant to such provision an incentive allowance of \$30 per month.*

*(2) The Secretary of Labor shall also pay, to any member of an eligible family with respect to whom the Secretary of Labor is required to make provision for referral under subsection (a) and who is receiving vocational rehabilitation services pursuant to such provision, allowances for transportation and other costs to such member which are necessary to and directly related to such member's participation in training.*

*(3) Allowances under this subsection shall be in lieu of allowances provided for participants in vocational rehabilitation services under any other Act.*

### **Evaluation and Research; Reports**

*SEC. 2118. (a) (1) The Secretary of Labor shall provide for the continuing evaluation of the program conducted under this part and of activities conducted under parts C and D insofar as they involve or are related to such program, including the effectiveness of such program in achieving its goals and its impact on other related programs. The Secretary of Labor may conduct research regarding, and demonstrations of, ways to improve the effectiveness of the program conducted under this part, and in so doing may waive any requirement or limitation imposed by or pursuant to this title to the extent he deems appropriate. The Secretary of Labor may, for these purposes, contract for evaluations of and research regarding such program.*

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(2) Of the sums authorized by section 2101 to be appropriated for any fiscal year, not more than \$10,000,000 shall be appropriated for purposes of paragraph (1).

(b) The Secretary shall, in conducting the activities provided for in subsection (a)(1), utilize the data collection, processing, and retrieval system established for use in the operation and administration of the program under this part.

(c) The Secretary of Labor shall make an annual report to the President and the Congress on the operation and administration of the program under this part, including an evaluation thereof in carrying out the purposes of this title and recommendations with respect thereto.

## **Part B—Family Assistance Plan**

### **Payment of Benefits**

*Sec. 2131. Every eligible family in which there is no member available for employment who has registered pursuant to section 2111 shall, in accordance with and subject to the other provisions of this title, be paid benefits by the Secretary of Health, Education, and Welfare as provided in part C.*

### **Rehabilitation Services for Incapacitated Family Members**

*Sec. 2132. (a) In the case of any individual who is a member of a family receiving benefits under this part and who is not required to register pursuant to section 2111(a) solely because of his incapacity under section 2111(b)(1), the Secretary of Health, Education, and Welfare shall make provision for referral of such individual to the appropriate State agency administering or supervising the administration of the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act, and (except in such cases involving permanent incapacity as he may determine) for a review not less often than quarterly of such individual's incapacity and his need for and utilization of the rehabilitation services made available to him under such plan.*

*(b) Every individual with respect to whom the Secretary of Health, Education, and Welfare is required to make provision for referral under subsection (a) shall accept such rehabilitation services as are made available to him under the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act, except where good cause exists for failure to accept such services; and the Secretary of Health, Education, and Welfare is authorized to pay to the State agency administering or supervising the administration of such State plan the costs incurred in the provision of such services to such individuals.*

*(c) (1) The Secretary of Health, Education, and Welfare shall pay to each family member with respect to whom the Secretary of Health, Education, and Welfare is required to make provision for referral under subsection (a) and who is receiving vocational rehabilitation services pursuant to such provision an incentive allowance of \$30 per month.*

*(2) The Secretary of Health, Education, and Welfare shall also pay, to any member of an eligible family with respect to whom the Secre-*

*tary of Health, Education, and Welfare is required to make provision for referral under subsection (a) and who is receiving vocational rehabilitation services pursuant to such provision, allowances for transportation and other costs to such member which are reasonably necessary to and directly related to such member's participation in such services.*

*(3) Allowances under this subsection shall be in lieu of allowances provided for participants in vocational rehabilitation services under any other Act.*

### **Child Care and Other Supportive Services**

*SEC. 2133. (a) (1) The Secretary of Health, Education, and Welfare shall make provision for the furnishing of child care services in such cases and for so long as he deems appropriate (subject to section 2179) for individuals who are currently referred pursuant to section 2132(a) for vocational rehabilitation (or who have been so referred within such period or periods of time as the Secretary of Health, Education, and Welfare may prescribe) and who need child care services in order to be able to participate in the vocational rehabilitation program.*

*(2) In making provision for the furnishing of child care services under this subsection, the Secretary of Health, Education, and Welfare shall arrange for and purchase, from whatever sources may be available, all such necessary child care services, including necessary transportation, placing priority on the use of facilities developed pursuant to section 2134.*

*(3) Where child care services cannot as a practical matter be made available in facilities developed pursuant to section 2134, the Secretary of Health, Education, and Welfare may provide such services, by grants to public or nonprofit private agencies or contracts with public or private agencies or other persons, through such public or private facilities as may be available and appropriate (except that no such funds may be used for the construction of facilities (as defined in section 2134(b) (2))). In addition to other grants and contracts made under the preceding sentence, grants or contracts under such sentence may be made to or with any agency which is designated by the appropriate elected or appointed official or officials in such area and which demonstrates a capacity to work effectively with the manpower agency in such area (including provision for the stationing of personnel with the manpower team in appropriate cases). To the extent appropriate, such care for children attending school which is provided on a group or institutional basis shall be provided through arrangements with the appropriate local educational agency.*

*(4) The Secretary of Health, Education, and Welfare may require individuals receiving child care services made available under paragraph (2) or provided under paragraph (3) to pay (in accordance with the schedule or schedules prescribed under section 2134(a)) for part or all of the cost thereof, and may require (as a condition of benefits under this part) that individuals receiving child care services otherwise furnished pursuant to provision made by him under paragraph (1) shall pay for the cost of such services if such cost will be excludable under section 2153(b) (3).*

(b) In addition, the Secretary of Health, Education, and Welfare shall make provision for the offering, to all appropriate members of families receiving benefits under this part, of family planning services, the acceptance of which by any such member shall be voluntary on the part of such member and shall not be a prerequisite to eligibility for or receipt of benefits under this part or otherwise affect the amount of such benefits.

### **Standards for Child Care; Development of Facilities**

**Sec. 2134.** (a) In order to promote the effective provision of child care services, the Secretary of Health, Education, and Welfare shall (1) establish, with the concurrence of the Secretary of Labor, standards assuring the quality of child care services provided under this title, (2) prescribe such schedule or schedules as may be appropriate for determining the extent to which families are to be required (in the light of their ability) to pay the costs of child care for which provision is made under section 2112(a)(1) or section 2133(a)(1), and (3) coordinate the provision of child care services under this title with other child care and social service programs which are available.

(b) (1) The Secretary of Health, Education, and Welfare, taking into account the requirement of section 2112(a)(7), is authorized to provide for (and pay part or all of the cost of) the construction of facilities, through grants to or contracts made with public or private nonprofit agencies or organizations, in or through which child care services are to be provided under this title.

(2) For purposes of this subsection, the term "construction" means acquisition, alteration, remodeling, or renovation of facilities, and includes, where the Secretary finds it is not feasible to use or adapt existing facilities for use for the provision of child care, construction (including acquisition of land therefor) of facilities for such care.

(3) If within twenty years of the completion of any construction for which Federal funds have been paid under this subsection—

(A) the owner of the facility shall cease to be a public or nonprofit private agency or organization, or

(B) the facility shall cease to be used for the purposes for which it was constructed, unless the Secretary determines in accordance with regulations that there is good cause for releasing the owner of the facility from the obligation to do so,

the United States shall be entitled to recover from the owner of the facility an amount which bears to the then value of the facility (or so much thereof as constituted an approved project or projects) the same ratio as the amount of such Federal funds bore to the cost of construction of the facility financed with the aid of such funds. Such value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which the facility is situated.

(4) All laborers and mechanics employed by contractors or subcontractors on all construction projects assisted under this subsection shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C.

276(a)-276(a)-5). The Secretary of Labor shall have with respect to the labor standards specified in this subsection the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276(c)).

(5) Of the sums authorized by section 2101 to be appropriated for any fiscal year, not more than \$50,000,000 shall be appropriated for purposes of the provisions of this subsection.

(c) The Secretary of Health, Education, and Welfare is authorized to make grants to any public or nonprofit private agency or organization, and contracts with any public or private agency or organization, for part or all of the cost of planning; establishment of new child care facilities or improvement of existing child care facilities, and operating costs (for periods not in excess of 24 months or for such longer periods as the Secretary finds necessary to insure continued operation) of such new or improved facilities; evaluation; training of personnel, especially the training of individuals receiving benefits pursuant to part A and registered pursuant to section 2111; technical assistance; and research or demonstration projects to determine more effective methods of providing any such care.

### **Evaluation and Research; Reports**

SEC. 2135. (a) (1) The Secretary of Health, Education, and Welfare shall provide for the continuing evaluation of the program conducted under this part and of activities conducted under parts C and D insofar as they involve or are related to such program, including the effectiveness of such program in achieving its goals and its impact on other related programs. The Secretary of Health, Education, and Welfare may conduct research regarding, and demonstrations of, ways to improve the effectiveness of the program conducted under this part, and in so doing may waive any requirement or limitation imposed by or pursuant to this title to the extent he deems appropriate. The Secretary of Health, Education, and Welfare may, for these purposes, contract for evaluations of and research regarding such program.

(2) Of the sums authorized by section 2101 to be appropriated for any fiscal year, not more than \$10,000,000 shall be appropriated for purposes of paragraph (1).

(b) The Secretary shall, in conducting the activities provided for in subsection (a) (1), utilize the data collection, processing, and retrieval system established for use in the operation and administration of the program under this part.

(c) The Secretary of Health, Education, and Welfare shall make an annual report to the President and the Congress on the operation and administration of the program under this part, including an evaluation thereof in carrying out the purposes of this title and recommendations with respect thereto.

### **Part C—Determination of Benefits**

#### **Determinations; Regulations**

SEC. 2151. Except as otherwise specifically provided in this title, determinations under this part and part D shall be made—



(1) by the Secretary of Labor with respect to benefits payable under part A and families claiming or receiving such benefits (and the term "Secretary" means the Secretary of Labor when used in this part and part D with respect to such benefits and families), and

(2) by the Secretary of Health, Education, and Welfare with respect to benefits payable under part B and families claiming or receiving such benefits (and the term "Secretary" means the Secretary of Health, Education, and Welfare when used in this part and part D with respect to such benefits and families); but in either case such determinations shall be made under and in accordance with regulations which shall be prescribed by the Secretary of Health, Education, and Welfare with the concurrence of the Secretary of Labor and which shall be designed to assure that such determinations will be made uniformly by the two Secretaries, so that to the maximum extent feasible any such determination made by either such Secretary (including any interpretation of law or application of fact made by either such Secretary as a basis for such a determination) will be the same as the determination which would be made by the other such Secretary on the same facts and under the same circumstances.

### **Eligibility for and Amount of Benefits**

#### **Definition of Eligible Family**

SEC. 2152. (a) Each family (as defined in section 2155)—

(1) whose income, other than income excluded pursuant to section 2153(b), is at a rate of not more than—

(A) \$800 per year for each of the first two members of the family, plus

(B) \$400 per year for each of the next three members, plus

(C) \$300 per year for each of the next two members, plus

(D) \$200 for the next member, and

(2) whose resources, other than resources excluded pursuant to section 2154, are not more than \$1,500, shall be an eligible family for purposes of this title.

#### **Amount of Benefits**

(b) The benefit for a family under part A or part B shall be payable at the rate of—

(1) \$800 per year for each of the first two members of the family, plus

(2) \$400 per year for each of the next three members, plus

(3) \$300 per year for each of the next two members, plus

(4) \$200 for the next member,

reduced by the amount of income, not excluded pursuant to section 2153(b), of the members of the family; except that no such benefit shall be payable to any family if the rate of payment (as otherwise determined under this part) would be less than \$10 a month.

**Exclusion of Certain Family Members**

(c) The amount of benefits which is payable to a family as determined in accordance with subsection (b) shall, with respect to each family member (whether or not taken into account under subsection (b) in determining such amount) who is available for employment and fails to register as required by section 2111(a), or fails to accept manpower services or accept or continue in employment or participate in training as required by section 2111(c), or refuses to accept or continue to participate in rehabilitation services as required by section 2117(b) or 2132(b), be reduced by—

- (1) \$800 per year in the case of each of the first two such members,
  - (2) \$400 per year in the case of each of the next three such members,
  - (3) \$300 per year in the case of the next two such members, and
  - (4) \$200 per year in the case of the next such member,
- or by proportionately smaller amounts for shorter periods.

**Payment of Benefits; Period for Determination of Benefits**

(d) (1) Payment of benefits (prior to determination under paragraph (2) of the amount of the benefits payable) shall be made during any quarter of a calendar year on the basis of the Secretary's estimate of the family's income for such quarter, after taking into account income from preceding quarters and any modifications which are likely to occur on the basis of changes in circumstances or conditions. Eligibility for benefits or the amount of payments shall be redetermined at any time within the quarter that the Secretary receives notice or otherwise has reason to believe that a material change in circumstances has occurred.

(2) The amount of the benefits payable to any family for any quarter of a calendar year shall be determined in the quarter immediately following such quarter; and, to the extent that the amount actually paid to such family for such quarter as provided in paragraph (1) was more or less than the amount so determined, proper adjustment or recovery shall be made as provided in section 2171(b). The benefits payable to a family for the quarter for which such determination is made shall be reduced by any income received in such quarter and in any one or more of the three quarters immediately preceding such quarter by any individual who was a member of the family both at the time such income was received and in the quarter for which such determination is made, if and to the extent that such amount was not counted as income of the family for the purpose of reducing the amounts described in subsection (b) or excluded pursuant to section 2153(b) or (if the family was not an eligible family for purposes of this title in any one or more of such preceding quarters) to the extent that such amount would not have been so counted for such purpose even if the family had then been an eligible family for purposes of this title.

(3) For purposes of paragraph (2), income not excluded under section 2153(b) with respect to the quarter for which a determination is made shall be considered first, to reduce the amounts described in

subsection (b); if benefits are payable thereafter, they shall be reduced by applying income not so excluded with respect to the first preceding quarter, then with respect to the second such quarter, and then with respect to the third such quarter, in that order. In the case of a family which did not receive benefits in each of the preceding three quarters, the Secretary may estimate (in the absence of satisfactory evidence) any amount which is needed for the determination of benefits under paragraph (2).

(4) The Secretary shall by regulation prescribe the cases in which and extent to which the amount of a family assistance benefit for any quarter shall be reduced by reason of the time elapsing since the beginning of such quarter and before the date of filing of the application for the benefit.

(5) For purposes of this subsection an application shall be considered to have been filed on the first day of the month in which it was actually filed.

#### Biennial Reapplication

(e) After a family has made application for benefits under this title and has been paid benefits (pursuant to such application) for 24 consecutive months, no further benefits shall be paid to such family under part A or part B except on the basis of a new application which shall be filed and processed as though it were such family's initial application for benefits under this title.

#### Special Limits on Gross Income

(f) The Secretary may prescribe the circumstances under which, consistently with the purposes of this title, the gross income from a trade or business (including farming) will be considered sufficiently large to make such family ineligible for such benefits. For purposes of this subsection, the term "gross income" has the same meaning as when used in chapter 1 of the Internal Revenue Code of 1954.

#### Certain Individuals Ineligible

(g) (1) Notwithstanding subsection (a), no family shall be an eligible family for purposes of this title if, after notice by the Secretary that it is likely that any member of such family is eligible for any payments of the type enumerated in section 2153(a)(2)(A), such member fails within 30 days to take all appropriate steps (excluding acceptance of any employment offered under any of the conditions specified in subparagraphs (A) through (D) of section 2111(c)(2)) to apply for and (if eligible) obtain any such payments.

(2)(A) No individual shall be considered a member of a family for purposes of determining the amount of such family's benefits if such individual is exempt under section 2111(b)(1) from the requirement of registration pursuant to section 2111(a) solely because of an incapacity which is determined by the Secretary to be the result in whole or in part of drug abuse or alcohol abuse unless such individual is undergoing any treatment that may be appropriate for such abuse at an institution or facility approved for purposes of this section by the Secretary (so long as such treatment is available) and demonstrates that he is complying with the terms, conditions, and requirements of

such treatment and with requirements imposed by the Secretary under subparagraph (B).

(B) The Secretary shall provide for the monitoring and testing of all individuals who are members of families for purposes of this title and who as a condition of being considered as such are required to be undergoing treatment and complying with the terms, conditions, and requirements thereof as described in subparagraph (A), in order to assure such compliance and to determine the extent to which the imposition of such requirement is contributing to the achievement of the purposes of this title. The Secretary shall annually submit to the Congress a full and complete report on his activities under this subsection.

(C) As used in subparagraph (A), the term "drug abuse" means abuse of a controlled substance within the meaning of section 102 of the Controlled Substances Act; and the term "alcohol abuse" means alcohol abuse or alcoholism within the meaning of section 247 of the Community Mental Health Centers Act.

#### Puerto Rico, the Virgin Islands, and Guam

(h) For special provisions applicable to Puerto Rico, the Virgin Islands, and Guam, see section 1108(e).

### Income

#### Meaning of Income

SEC. 2153. (a) For purposes of this part, income means both earned income and unearned income; and—

(1) earned income means only—

(A) wages as determined under section 203(f)(5)(C);

(B) net earnings from self-employment, as defined in section 211 (without the application of the second and third sentences following clause (C) of subsection (a)(9), and the last paragraph of subsection (a)), including earnings for services described in paragraphs (4), (5), and (6) of subsection (a); and

(2) unearned income means all other income, including support and maintenance furnished in cash or otherwise, and including—

(A) any payments received as an annuity, pension, retirement, or disability benefit, including veterans' compensation and pensions, workmen's compensation payments, old-age, survivors, and disability insurance benefits, railroad retirement annuities and pensions, and unemployment insurance benefits;

(B) prizes and awards;

(C) the proceeds of any life insurance policy to the extent that they exceed the amount expended by family members for expenses of the insured individual's last illness and burial or \$1,500, whichever is less;

(D) gifts (cash or otherwise), support and alimony payments, and inheritances; and

(E) rents, dividends, interest, and royalties.

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**Exclusions From Income**

(b) In determining the income of a family there shall be excluded—

(1) subject to limitations (as to amount or otherwise) prescribed by the Secretary, the earned income of each child in the family who is, as determined by the Secretary under regulations, a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare him for gainful employment;

(2) (A) the total unearned income of all members of a family in a calendar quarter which, as determined in accordance with criteria prescribed by the Secretary, is received too infrequently or irregularly to be included, if such income so received does not exceed \$60 in such quarter, and (B) the total earned income of all members of a family in a calendar quarter which, as determined in accordance with such criteria, is received too infrequently or irregularly to be included, if such income so received does not exceed \$30 in such quarter;

(3) an amount of earned income of a member of the family equal to all, or such part (and according to such schedule) as the Secretary may prescribe, of the cost incurred by such member for child care which the Secretary deems necessary to securing or continuing in manpower training, vocational rehabilitation, employment, or self-employment;

(4) the first \$720 per year (or proportionately smaller amounts for shorter periods) of the total of earned income (not excluded by the preceding paragraphs of this subsection) of all members of the family plus one-third of the remainder thereof;

(5) subject to section 2156, any assistance (except veterans' pensions) which is based on need and furnished by any State or political subdivision of a State or any Federal agency (including relocation assistance under section 2114(b)(3)), or by any private agency or organization exempt from taxation under section 501(a) of the Internal Revenue Code of 1954 as an organization described in section 501(c) (3) or (4) of such Code;

(6) (A) allowances under section 2115(a), 2117(c), or 2132(c);

(B) allowances of the types described in such sections which are paid by a State or political subdivision thereof to a member of a family receiving benefits under this title, to the extent that such allowances do not exceed \$30 per month;

(7) any portion of any grant, scholarship, or fellowship received for use in paying the cost of tuition and fees at any educational (including technical or vocational education) institution;

(8) home produce of a member of the family utilized by the household for its own consumption;

(9) one-third of any payments received for the support of children who are family members, or as alimony paid to family members; and

(10) any amounts received for the foster care of a child who is not a member of the family but who is living in the same home as the family and was placed in such home by a public or nonprofit private child-placement or child-care agency.

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Notwithstanding any other provision of this part, the total amount which may be excluded under paragraphs (1), (2), and (3) in determining the income of any family for any year shall not exceed the lesser of—

- (i) \$2,000 plus \$200 for each member of the family in excess of four, or
- (ii) \$3,000,  
or a proportionately smaller amount for a shorter period.

### Resources

#### Exclusions From Resources

SEC. 2154. (a) In determining the resources of a family there shall be excluded—

- (1) the home, to the extent that its value does not exceed such amount as the Secretary determines to be reasonable;
- (2) household goods and personal effects, to the extent that their total value does not exceed such amount as the Secretary determines to be reasonable; and
- (3) other property which, as determined in accordance with and subject to limitations prescribed by the Secretary, is so essential to the family's means of self-support as to warrant its exclusion.

In determining the resources of a family an insurance policy shall be taken into account only to the extent of its cash surrender value; except that if the total face value of all life insurance policies on any person is \$1,500 or less, no part of the value of any such policy shall be taken into account.

#### Disposition of Resources

(b) The Secretary shall prescribe the period or periods of time within which, and the manner in which, various kinds of property must be disposed of in order not to be included in determining a family's eligibility for benefits. Any portion of the family's benefits paid for any such period shall be conditioned upon such disposal; and any benefits so paid shall (at the time of the disposal) be considered overpayments to the extent they would not have been paid had the disposal occurred at the beginning of the period for which such benefits were paid.

### Meaning of Family and Child

#### Meaning of Family

SEC. 2155. (a) Two or more individuals—

- (1) who are related by blood, marriage, or adoption,
  - (2) who are living in a place of residence maintained by one or more of them as his or their own home,
  - (3) all of whom are residents of the United States, and at least one of whom is either (A) a citizen or (B) an alien lawfully admitted for permanent residence, and
  - (4) at least one of whom is a child who is in the care of or dependent upon another of such individuals,
- shall be regarded as a family for purposes of this title and part A of title IV. A parent (or a child living in a place of residence referred

to in paragraph (2)), or a spouse of such a parent, who is determined by the Secretary to be temporarily absent from such place of residence for the purpose of engaging in or seeking employment or self-employment (including military service) shall nevertheless be considered (for purposes of paragraph (2)) to be living in such place of residence. Notwithstanding any other provision of this title—

(A) no two or more individuals in any household shall be considered a family for purposes of this title if the individual who is the head of such household is a fulltime undergraduate or graduate student at a college or university; and

(B) no individual shall (except as provided in the preceding sentence) be considered a member of a family for any of the purposes of this title with respect to any month during all of which such individual is outside the United States; and for purposes of this clause after an individual has been outside the United States for any period of 30 consecutive days, he shall be treated as remaining outside the United States until he has been in the United States for a period of 30 consecutive days.

#### Meaning of Child

(b) For purposes of this title, the term "child" means an individual who is neither married nor (as determined by the Secretary) the head of a household, and who is (1) under the age of eighteen, or (2) under the age of twenty-two and (as determined by the Secretary) a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare him for gainful employment.

#### Determination of Family Relationships

(c) In determining whether an individual is related to another individual by blood, marriage, or adoption, appropriate State law shall be applied.

#### Income and Resources of Noncontributing Individual

(d) For purposes of determining eligibility for and the amount of benefits for any family there shall be excluded the income and resources of any individual, other than a parent of a child, or a spouse of a parent, who is a family member, which, as determined in accordance with criteria prescribed by the Secretary, is not available to other members of the family; and for such purposes such individual—

(1) in the case of a child, shall be regarded as a member of the family for purposes of determining the family's eligibility for such benefits but not for purposes of determining the amount of such benefits, and

(2) in any other case, shall not be considered a member of the family for any purpose.

#### United States

(e) For purposes of this title, the term "United States", when used in a geographical sense, means the States and the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

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**Recipients of Assistance for the Aged, Blind, and Disabled  
Ineligible**

(f) If an individual is receiving benefits under title XX, then, for the period for which such benefits are received, such individual shall not be regarded as a member of a family for purposes of determining the amount of the benefits of the family under this title and his income and resources shall not be counted as income and resources of a family under this title.

**Optional State Supplementation**

SEC. 2156. (a) Any cash payments which are made by a State (or political subdivision thereof) on a regular basis to individuals who are receiving benefits under this title or who would but for their income be eligible to receive benefits under this title, as assistance based on need in supplementation of such benefits (as determined by the Secretary), shall be excluded under section 2153(b) (5) in determining the income of such individuals for purposes of this title only if (1) the Secretary and such State enter into an agreement which satisfies subsection (b) and which may at the option of the State provide that the Secretary will, on behalf of such State (or subdivision), make such supplementary payments to all such individuals, and (2) such supplementary payments are made to such individuals in accordance with such agreement.

(b) Any agreement between the Secretary and a State entered into under subsection (a) shall provide—

(1) that in determining the eligibility of any family for supplementary payments on the basis of the income of the family, all the provisions of section 2153(b) will apply, except that with respect to any quarter—

(A) if benefits are paid to such family for such quarter under part A or part B, such benefits will not be excluded from income in applying paragraph (5) of such section, and

(B) if no benefits are paid to such family for such quarter under part A or part B, the requirement of this paragraph shall not apply with respect to such family; except that the supplementary payment shall not be reduced, on account of income in excess of the maximum amount which such family could have and still receive such a benefit, by an amount greater than such excess,

and, if the agreement provides that the Secretary will, on behalf of the State (or political subdivision), make the supplementary payments to individuals receiving benefits under this title, shall also provide—

(2) that such payments will be made (subject to subsection (c)) to all families residing in such State (or subdivision) who are receiving benefits under this title except that the State may, at its option, exclude—

(A) families in which both parents of the child or children are present, neither parent is incapacitated, and the male parent is not unemployed, or

(B) families described in subparagraph (A) and families in which both parents of the child or children are present,



neither parent is incapacitated, and the male parent is unemployed, and

(3) such other rules with respect to eligibility for or amount of the supplementary payments, and such procedural or other general administrative provisions, as the Secretary finds necessary (subject to subsection (c)) to achieve efficient and effective administration of both the program which he conducts under this title and the optional State supplementation.

(c) Any State (or political subdivision) making supplementary payments described in subsection (a) may at its option impose as a condition of eligibility for such payments, and include in the State's agreement with the Secretary under such subsection, a residence requirement which excludes individuals who have resided in the State (or political subdivision) for less than a minimum period prior to application for such payments.

(d) Any State which has entered into an agreement with the Secretary under this section which provides that the Secretary will, on behalf of the State (or political subdivision), make the supplementary payments to individuals who are receiving benefits under this title (or who would but for their income be eligible to receive such benefits), shall, subject to section 503 of the Social Security Amendments of 1971, at such times and in such installments as may be agreed upon between the Secretary and such State, pay to the Secretary an amount equal to the expenditures made by the Secretary as such supplementary payments.

## Part D—Procedural and General Provisions

### Payments and Procedures

#### Payment of Benefits

Sec 2171. (a) (1) Benefits under this title shall be paid at such time or times and in such installments as will best effectuate the purposes of this title.

(2) (A) Payment of the benefit of any family may be made to any one or more members of the family, or, if the Secretary finds, after reasonable notice and opportunity for hearing (which shall be held in the same manner and subject to the same conditions as a hearing under subsection (c) (1) and (2)) to the family member or members to whom the benefits are (or, but for this provision, would be) paid, that such member or members have such inability to manage funds that making payment to such member or members would be contrary to the welfare of the child or children in such family, he may make payment to any person other than a member of such family (including an appropriate public or private agency) who is interested in or concerned with the welfare of the family. The Secretary shall investigate each case in which he has reason to believe that a family receiving payments under this title is unable to manage such payments in accordance with its best interests.

(B) If the Secretary makes payment under subparagraph (A) to a person who is not a member of the family, he shall review his finding under the preceding sentence periodically to determine whether the conditions justifying such finding still exist, and, if they do not,

he shall discontinue making payments to any person who is not a member of the family. If it appears to the Secretary that such conditions are likely to continue beyond a period specified by him, he shall attempt to secure the appointment of a guardian or other legal representative for the family member with respect to whom such finding is made, and take any other steps he may find appropriate to protect the welfare of the child or children in the family.

(C) No part of the benefits of any family may be paid to any member of such family who has failed to register as required by section 2111(a) or who fails to accept services or employment or participate in training as required by section 2111(o), or who refuses to accept rehabilitation services as required by section 2117(b) or section 2132(b); and the Secretary may, if he deems it appropriate, provide for the payment of such benefits during the period of such failure to any person other than a member of such family (including an appropriate public or private agency) who is interested in or concerned with the welfare of the family, without making the finding required by subparagraph (A) and without regard to subparagraph (B).

(3) The Secretary may establish ranges of incomes within which a single amount of benefits under this title shall apply.

(4) The Secretary may make, to any family initially applying for benefits under this title which is presumptively eligible for such benefits and which is faced with financial emergency, a cash advance against such benefits in an amount not exceeding \$100.

#### Overpayments and Underpayments

(b) Whenever the Secretary finds that more or less than the correct amount of benefits has been paid with respect to any family, proper adjustment or recovery shall, subject to the succeeding provisions of this subsection, be made by appropriate adjustments in future payments to the family under part A or part B or by recovery from or payment to any one or more of the individuals who are or were members thereof. The Secretary shall make such provision as he finds appropriate in the case of payment of more than the correct amount of benefits with respect to a family with a view to avoiding penalizing members of the family who were without fault in connection with the overpayment, if adjustment or recovery on account of such overpayment in such case would defeat the purposes of this title, or be against equity or good conscience, or (because of the small amount involved) impede efficient or effective administration of this title.

#### Hearings and Review

(c)(1) The Secretary shall provide reasonable notice and opportunity for a hearing to any individual who is or claims to be a member of a family and is in disagreement with any determination under this title with respect to—

(A) eligibility of the family for benefits, the number of members of the family, or the amount of the family's benefits, or

(B) the refusal of such individual to register for or participate or continue to participate in manpower services, training, or employment, or to accept employment or rehabilitation services,

*if such individual requests a hearing on the matter in disagreement within thirty days after notice of such determination is received.*

*(2) Determination on the basis of such hearing shall be made within ninety days after the individual requests the hearing as provided in paragraph (1).*

*(3) The final determination of the Secretary after a hearing under paragraph (1) shall be subject to judicial review as provided in section 205(g) to the same extent as the Secretary's final determination under section 205; except that the determination of the Secretary after such hearing as to any fact shall be final and conclusive and not subject to review by any court.*

**Procedures; Prohibition of Assignments; Representation of Claimants**

*(d) (1) The provisions of section 207 and subsections (a), (d), (e), and (f) of section 205 shall apply with respect to this part to the same extent as they apply in the case of title II.*

*(2) To the extent the Secretary finds it will promote the achievement of the objectives of this part, qualified persons may be appointed to serve as hearing examiners in hearings under subsection (c) without meeting the specific standards prescribed for hearing examiners by or under subchapter II of chapter 5 of title 5, United States Code.*

*(3) The Secretary may prescribe rules and regulations governing the recognition of agents or other persons, other than attorneys as hereinafter provided, representing claimants before the Secretary under this part, and may require of such agents or other persons, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. An attorney in good standing who is admitted to practice before the highest court of the State, Territory, District, or insular possession of his residence or before the Supreme Court of the United States or the inferior Federal courts, shall be entitled to represent claimants before the Secretary. The Secretary may, after due notice and opportunity for hearing, suspend or prohibit from further practice before him any such person, agent, or attorney who refuses to comply with the Secretary's rules and regulations or who violates any provision of this paragraph for which a penalty is prescribed. The Secretary may, by rule and regulation, prescribe the maximum fees which may be charged for services performed in connection with any claim before the Secretary under this part, and any agreement in violation of such rules and regulations shall be void. Any person who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant or beneficiary under this part by word, circular, letter, or advertisement, or who shall knowingly charge or collect directly or indirectly any fee in excess of the maximum fee, or make any agreement directly or indirectly to charge or collect any fee in excess of the maximum fee, prescribed by the Secretary, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine not exceeding \$500 or by imprisonment not exceeding one year, or both.*

### Application and Furnishing of Information by Families

(e) (1) *The Secretary shall prescribe such requirements in the case of families or members thereof for the filing of applications, the suspension or termination of benefits, the furnishing of other data and material, and the reporting of events and changes in circumstances, as may be necessary to determine eligibility for and amount of family assistance benefits.*

(2) *Each family who received benefits under part A or part B in a quarter shall be required, not later than 30 days after the close of such quarter, to submit a report to the Secretary containing such information and in such form as he may prescribe in order to enable him to determine eligibility for and the amount of the benefits payable to such family with respect to such quarter as provided in section 2152 (d). In case of failure by any family to submit the report within such 30 days, no payment of benefits under part A or part B shall be made to such family so long as such failure continues.*

(3) *In case of the failure by any family to submit any other data, material, or report required under paragraph (1), or delay by any individual in submitting such data, material, or report as so required, the Secretary shall reduce any benefits which may subsequently become payable to such family under this title by—*

- (A) *\$25 in the case of the first such failure or delay,*
- (B) *\$50 in the case of the second such failure or delay, and*
- (C) *\$100 in the case of the third or a subsequent such failure or delay,*

*except where the family was without fault or good cause for such failure or delay existed.*

### Furnishing of Information by Other Agencies

(f) *The head of any Federal agency shall provide such information as the Secretary needs for purposes of determining eligibility for or amount of benefits, or verifying other information with respect thereto.*

### Penalties for Fraud

**SEC. 2172. Whoever—**

(1) *knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit under this title,*

(2) *at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to any such benefit,*

(3) *having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit, or (B) the initial or continued right to any such benefit of any other individual in whose behalf he has applied for or is receiving such benefit, conceals or fails to disclose such event with an intent fraudulently to secure such benefit either in a greater amount or quantity than is due or when no such benefit is authorized, or*

(4) *having made application to receive any such benefit for the use and benefit of another and having received it, knowingly and*

*willfully converts such benefit or any part thereof to a use other than for the use and benefit of such other person, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.*

### **Administration**

**SEC. 2173.** *The Secretary of Health, Education, and Welfare and the Secretary of Labor may each perform any of his functions under this title (or section 1124) directly, through arrangements with each other or with other Federal agencies, or by contract with public or private agencies providing for payment in advance or by way of reimbursement, and in such installments, as he may deem necessary.*

### **Advance Funding**

**SEC. 2174.** (a) *For the purpose of affording adequate notice of funding available under this title, appropriations for grants, contracts, or other payments under part A or part B (other than benefits under section 2113 or 2131) are authorized to be included in an appropriation Act for the fiscal year preceding the fiscal year for which they are available for obligation.*

(b) *In order to effect a transition to the advance funding method of timing appropriation action, subsection (a) shall apply notwithstanding that its initial application will result in enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding fiscal year.*

### **Obligation of Deserting Parents**

**SEC. 2175.** *In any case where an individual has deserted or abandoned his spouse or his child or children and such spouse or any such child (during the period of such desertion or abandonment) is a member of a family receiving benefits under this title, such individual shall be obligated to the United States in an amount equal to—*

(1) *the total amount of the benefits paid to such family during such period with respect to such spouse and child or children, reduced by*

(2) *any amount actually paid by such individual to or for the support and maintenance of such spouse or child or children during such period, if and to the extent that such amount is excluded in determining the amount of such benefits;*

*except that in any case where an order for the support and maintenance of such spouse or any such child has been issued by a court of competent jurisdiction, the obligation of such individual under this subsection (with respect to such spouse or child) for any period shall not exceed the amount specified in such order less any amount actually paid by such individual (to or for the support and maintenance of such spouse or child) during such period. The amount due the United States under such obligation shall be collected (to the extent that the claim of the United States therefor is not paid by such individual or otherwise satisfied), in such manner as may be specified by the Secretary from any amounts otherwise due him or becoming due him at*

*any time from any officer or agency of the United States or under any Federal program. Amounts collected under the preceding sentence shall be deposited in the Treasury as miscellaneous receipts.*

### **Penalty for Interstate Flight To Avoid Parental Responsibilities**

*SEC. 2176. Whoever, being the parent of a child receiving benefits under this title as a member of a family, moves or travels in interstate commerce for the purpose of avoiding responsibility for the support of such child or any other responsibility imposed upon him by or under any law pertaining to the obligations of a parent to his child, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.*

### **Reports of Improper Care or Custody of Children**

*SEC. 2177. Whenever the Secretary, in the performance of his functions under this title, obtains or comes into possession of information which indicates or gives him reason to believe that any child is being or has been subjected to neglect, abuse, exploitation, or other improper care or custody, he shall so advise the appropriate State or local child welfare agency and the head of the Federal department or agency (if such department or agency is not the Department of which the Secretary is head) which is most directly concerned with or exercises primary Federal jurisdiction over factual situations of the type involved.*

### **Establishment of Local Committees To Evaluate Effectiveness of Manpower and Training Programs**

*SEC. 2178. (a) The Secretary of Health, Education, and Welfare and the Secretary of Labor (in this section referred to as the "Secretaries") shall jointly establish or designate such local advisory committees throughout the United States as may be necessary or appropriate to assist them in evaluating the effectiveness of the training and employment programs under this title, together with related child care, family planning, and other services, in helping needy families to become self-supporting and in otherwise achieving the objectives of this title. Each such local committee shall perform its functions within an area specified by the Secretaries at the time of its establishment or designation; but at least one such committee shall be established or designated in every State.*

*(b) Each local advisory committee established or designated under subsection (a) shall, as specified by the Secretaries, consist of persons representative of labor, business, the general public, and units of local government not directly involved in administering employment and training programs under this title, and shall have a chairman elected by the committee from among its members. Members of each local committee shall be selected in such manner, and serve for such terms, as may be specified by the Secretaries.*

*(c) Each local advisory committee established or designated under subsection (a) shall submit to the Secretaries at regular intervals a report on the effectiveness of the programs and services referred to*

*in subsection (a) in the area within which it performs its functions, together with its recommendations for improving such effectiveness and such additional information as the Secretaries may request in connection with such programs and services.*

*(d) The Secretaries shall provide each local advisory committee established or designated under subsection (a) with the funds necessary for the reasonable expenses of its members in the performance of its functions. There are authorized to be appropriated such sums as may be necessary to carry out this subsection.*

### ***Initial Authorization for Appropriations for Child Care Services***

*Sec. 2179. Of the sums authorized by section 2101 to be appropriated for the fiscal year ending June 30, 1973, not more than \$700,000,000 in the aggregate shall be appropriated to the Secretary of Labor to enable him to carry out his responsibilities under section 2112(a) and to the Secretary of Health, Education, and Welfare to enable him to carry out his responsibilities under sections 2133(a) and 2134(c).*

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