

“(B) For purposes of this paragraph, the term ‘system of records’ has the meaning given such term in section 552a(a)(5) of title 5, United States Code.”.

(c) WITHHOLDING OF FEDERAL MATCHING PAYMENTS FOR STATES THAT FAIL TO REPORT ENROLLEE ENCOUNTER DATA IN THE MEDICAID STATISTICAL INFORMATION SYSTEM.—Section 1903(i) of the Social Security Act (42 U.S.C. 1396b(i)) is amended—

- (1) in paragraph (23), by striking “or” at the end;
- (2) in paragraph (24), by striking the period at the end and inserting “; or”; and
- (3) by adding at the end the following new paragraph:

“(25) with respect to any amounts expended for medical assistance for individuals for whom the State does not report enrollee encounter data (as defined by the Secretary) to the Medicaid Statistical Information System (MSIS) in a timely manner (as determined by the Secretary).”.

(d) PERMISSIVE EXCLUSIONS AND CIVIL MONETARY PENALTIES.—

(1) PERMISSIVE EXCLUSIONS.—Section 1128(b) of the Social Security Act (42 U.S.C. 1320a-7(b)) is amended by adding at the end the following new paragraph:

“(16) MAKING FALSE STATEMENTS OR MISREPRESENTATION OF MATERIAL FACTS.—Any individual or entity that knowingly makes or causes to be made any false statement, omission, or misrepresentation of a material fact in any application, agreement, bid, or contract to participate or enroll as a provider of services or supplier under a Federal health care program (as defined in section 1128B(f)), including Medicare Advantage organizations under part C of title XVIII, prescription drug plan sponsors under part D of title XVIII, medicaid managed care organizations under title XIX, and entities that apply to participate as providers of services or suppliers in such managed care organizations and such plans.”.

(2) CIVIL MONETARY PENALTIES.—

(A) IN GENERAL.—Section 1128A(a) of the Social Security Act (42 U.S.C. 1320a-7a(a)) is amended—

- (i) in paragraph (1)(D), by striking “was excluded” and all that follows through the period at the end and inserting “was excluded from the Federal health care program (as defined in section 1128B(f)) under which the claim was made pursuant to Federal law.”;
- (ii) in paragraph (6), by striking “or” at the end;
- (iii) by inserting after paragraph (7), the following new paragraphs:

“(8) orders or prescribes a medical or other item or service during a period in which the person was excluded from a Federal health care program (as so defined), in the case where the person knows or should know that a claim for such medical or other item or service will be made under such a program;

“(9) knowingly makes or causes to be made any false statement, omission, or misrepresentation of a material fact in any application, bid, or contract to participate or enroll as a provider of services or a supplier under a Federal health care program (as so defined), including Medicare Advantage organizations under part C of title XVIII, prescription drug plan sponsors under part D of title XVIII, medicaid managed care organizations under title XIX, and entities that apply to participate

as providers of services or suppliers in such managed care organizations and such plans;

“(10) knows of an overpayment (as defined in paragraph (4) of section 1128J(d)) and does not report and return the overpayment in accordance with such section;”;

(iv) in the first sentence—

(I) by striking the “or” after “prohibited relationship occurs;”; and

(II) by striking “act)” and inserting “act; or in cases under paragraph (9), \$50,000 for each false statement or misrepresentation of a material fact); and

(v) in the second sentence, by striking “purpose” and inserting “purpose; or in cases under paragraph (9), an assessment of not more than 3 times the total amount claimed for each item or service for which payment was made based upon the application containing the false statement or misrepresentation of a material fact)”.

(B) CLARIFICATION OF TREATMENT OF CERTAIN CHARITABLE AND OTHER INNOCUOUS PROGRAMS.—Section 1128A(i)(6) of the Social Security Act (42 U.S.C. 1320a-7a(i)(6)) is amended—

(i) in subparagraph (C), by striking “or” at the end;

(ii) in subparagraph (D), as redesignated by section 4331(e) of the Balanced Budget Act of 1997 (Public Law 105-33), by striking the period at the end and inserting a semicolon;

(iii) by redesignating subparagraph (D), as added by section 4523(c) of such Act, as subparagraph (E) and striking the period at the end and inserting “; or”; and

(iv) by adding at the end the following new subparagraphs:

“(F) any other remuneration which promotes access to care and poses a low risk of harm to patients and Federal health care programs (as defined in section 1128B(f) and designated by the Secretary under regulations);

“(G) the offer or transfer of items or services for free or less than fair market value by a person, if—

“(i) the items or services consist of coupons, rebates, or other rewards from a retailer;

“(ii) the items or services are offered or transferred on equal terms available to the general public, regardless of health insurance status; and

“(iii) the offer or transfer of the items or services is not tied to the provision of other items or services reimbursed in whole or in part by the program under title XVIII or a State health care program (as defined in section 1128(h));

“(H) the offer or transfer of items or services for free or less than fair market value by a person, if—

“(i) the items or services are not offered as part of any advertisement or solicitation;