

*Institutionalized individual* means an individual who is (a) involuntarily confined or detained, under a civil or criminal statute, in a correctional or rehabilitative facility, including a mental hospital or other facility for the care and treatment of mental illness; or (b) confined, under a voluntary commitment, in a mental hospital or other facility for the care and treatment of mental illness.

*Mentally incompetent individual* means an individual who has been declared mentally incompetent by a Federal, State, or local court of competent jurisdiction for any purpose, unless the individual has been declared competent for purposes which include the ability to consent to sterilization.

*Sterilization* means any medical procedure, treatment, or operation for the purpose of rendering an individual permanently incapable of reproducing.

**§ 441.252 State plan requirements.**

A State plan must provide that the Medicaid agency will make payment under the plan for sterilization procedures and hysterectomies only if all the requirements of this subpart were met.

**§ 441.253 Sterilization of a mentally competent individual aged 21 or older.**

FFP is available in expenditures for the sterilization of an individual only if—

- (a) The individual is at least 21 years old at the time consent is obtained;
- (b) The individual is not a mentally incompetent individual;
- (c) The individual has voluntarily given informed consent in accordance with all the requirements prescribed in §§ 441.257 and 441.258; and
- (d) At least 30 days, but not more than 180 days, have passed between the date of informed consent and the date of the sterilization, except in the case of premature delivery or emergency abdominal surgery. An individual may consent to be sterilized at the time of a premature delivery or emergency abdominal surgery, if at least 72 hours have passed since he or she gave informed consent for the sterilization. In the case of premature delivery, the informed consent must have been given

at least 30 days before the expected date of delivery.

**§ 441.254 Mentally incompetent or institutionalized individuals.**

FFP is not available for the sterilization of a mentally incompetent or institutionalized individual.

**§ 441.255 Sterilization by hysterectomy.**

(a) FFP is not available in expenditures for a hysterectomy if—

- (1) It was performed solely for the purpose of rendering an individual permanently incapable of reproducing; or
- (2) If there was more than one purpose to the procedure, it would not have been performed but for the purpose of rendering the individual permanently incapable of reproducing.

(b) FFP is available in expenditures for a hysterectomy not covered by paragraph (a) of this section only under the conditions specified in paragraph (c), (d), or (e) of this section.

(c) FFP is available if—

(1) The person who secured authorization to perform the hysterectomy has informed the individual and her representative, if any, orally and in writing, that the hysterectomy will make the individual permanently incapable of reproducing; and

(2) The individual or her representative, if any, has signed a written acknowledgment of receipt of that information.

(d) Effective on March 8, 1979 or any date thereafter through the date of publication of these regulations at the option of the State, FFP is available if—

(1) The individual—

(i) Was already sterile before the hysterectomy; or

(ii) Requires a hysterectomy because of a life-threatening emergency situation in which the physician determines that prior acknowledgment is not possible; and

(2) The physician who performs the hysterectomy—

(i) Certifies in writing that the individual was already sterile at the time of the hysterectomy, and states the cause of the sterility; or

(ii) Certifies in writing that the hysterectomy was performed under a