

§ 442.40 Availability of FFP during appeals for ICFs/MR.

(a) *Definitions.* As used in this section—

Effective date of expiration means the date of expiration originally specified in the provider agreement, or the later date specified if the agreement is extended under § 442.16; and

Effective date of termination means a date earlier than the expiration date, set by the Medicaid agency when continuing participation until the expiration date is not justified, because the facility no longer meets the requirements for participation.

(b) *Scope, applicability, and effective date—*(1) *Scope.* This section sets forth the extent of FFP in State Medicaid payments to an ICF/MR after its provider agreement has been terminated or has expired and not been renewed.

(2) *Applicability.* (i) This section and § 442.42 apply only when the Medicaid agency, of its own volition, terminates or does not renew a provider agreement, and only when the survey agency certifies that there is no jeopardy to recipient health and safety. When the survey agency certifies that there is jeopardy to recipient health and safety, or when it fails to certify that there is no jeopardy, FFP ends on the effective date of termination or expiration.

(ii) When the State acts under instructions from CMS, FFP ends on the date specified by CMS (CMS instructs the State to terminate the Medicaid provider agreement when CMS in validating a State survey agency certification, determines that an ICF/MR does not meet the requirements for participation.)

(3) *Effective date.* This section and § 442.42 apply to terminations or expirations that are effective on or after September 28, 1987. For terminations or nonrenewals that were effective before that date, FFP may continue for up to 120 days from September 28, 1987, or 12 months from the effective date of termination or nonrenewal, whichever is earlier.

(c) *Basic rules.* (1) Except as provided in paragraphs (d) and (e) of this section, FFP in payments to an ICF/MR ends on the effective date of termination of the facility's provider agreement, or if the agreement is not termi-

nated, on the effective date of expiration.

(2) If State law, or a Federal or State court order or injunction, requires the agency to extend the provider agreement or continue payments to a facility after the dates specified in paragraph (d) of this section, FFP is not available in those payments.

(d) *Exception: Continuation of FFP after termination or expiration of provider agreement—*(1) *Conditions for continuation.* FFP is available after the effective date of termination or expiration only if—

(i) The evidentiary hearing required under § 431.153 of this chapter is provided by the State agency after the effective date of termination or expiration (or, if begun before termination or expiration, is not completed until after that date); and

(ii) Termination or nonrenewal action is based on a survey agency certification that there is no jeopardy to recipients' health and safety.

(2) *Extent of continuation.* FFP is available only through the earlier of the following:

(i) The date of issuance of an administrative hearing decision that upholds the agency's termination or nonrenewal action.

(ii) The 120th day after the effective date of termination of the facility's provider agreement or, if the agreement is not terminated, the 120th day after the effective date of expiration. (If a hearing decision that upholds the facility is issued after the end of the 120-day period, when FFP has already been discontinued, the rules of § 442.42 on retroactive agreements apply).

(e) *Applicability of § 441.11.* If FFP is continued during appeal under paragraph (d) of this section, the 30-day period provided by § 441.11 of this chapter would not begin to run until issuance of a hearing decision that upholds the agency's termination or nonrenewal action.

[52 FR 32551, Aug. 28, 1987, as amended at 56 FR 48865, Sept. 26, 1991; 59 FR 56236, Nov. 10, 1994]

§ 442.42 FFP under a retroactive provider agreement following appeal.

(a) *Basic rule.* Except as specified in paragraph (b) of this section, if an NF