

## § 431.105

(c) Nonemergency services are services that do not meet the definition of emergency services at § 447.53(b)(4) of this subchapter.

(d) In order for a waiver to be approved under this section, the State must establish to the satisfaction of CMS that alternative sources of non-emergency, outpatient services are available and accessible to recipients.

(e) Although, in accordance with § 431.55(b)(3) of this part, a waiver will generally be granted for a 2-year duration, CMS will reevaluate waivers approved under this section if the State increases the nominal copayment amounts in effect when the waiver was approved.

(f) A waiver approved under this section cannot apply to services furnished before the waiver was granted.

[59 FR 4600, Feb. 1, 1994]

### Subpart C—Administrative Requirements: Provider Relations

#### § 431.105 Consultation to medical facilities.

(a) *Basis and purpose.* This section implements section 1902(a)(24) of the Act, which requires that the State plan provide for consultative services by State agencies to certain institutions furnishing Medicaid services.

(b) *State plan requirements.* A State plan must provide that health agencies and other appropriate State agencies furnish consultative services to hospitals, nursing homes, home health agencies, clinics, and laboratories in order to assist these facilities to—

(1) Qualify for payments under the maternal and child health and crippled children's program (title V of the Act), Medicaid or Medicare;

(2) Establish and maintain fiscal records necessary for the proper and efficient administration of the Act; and

(3) Provide information needed to determine payments due under the Act for services furnished to recipients.

(c) *State plan option: Consultation to other facilities.* The plan may provide that health agencies and other appropriate State agencies furnish consultation to other types of facilities if those facilities are specified in the plan and provide medical care to individuals re-

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ceiving services under the programs specified in paragraph (b) of this section.

#### § 431.107 Required provider agreement.

(a) *Basis and purpose.* This section sets forth State plan requirements, based on sections 1902(a)(4), 1902(a)(27), 1902(a)(57), and 1902(a)(58) of the Act, that relate to the keeping of records and the furnishing of information by all providers of services (including individual practitioners and groups of practitioners).

(b) *Agreements.* A State plan must provide for an agreement between the Medicaid agency and each provider or organization furnishing services under the plan in which the provider or organization agrees to:

(1) Keep any records necessary to disclose the extent of services the provider furnishes to recipients;

(2) On request, furnish to the Medicaid agency, the Secretary, or the State Medicaid fraud control unit (if such a unit has been approved by the Secretary under § 455.300 of this chapter), any information maintained under paragraph (b)(1) of this section and any information regarding payments claimed by the provider for furnishing services under the plan;

(3) Comply with the disclosure requirements specified in part 455, subpart B of this chapter; and

(4) Comply with the advance directives requirements for hospitals, nursing facilities, providers of home health care and personal care services, hospices, and HMOs specified in part 489, subpart I, and § 417.436(d) of this chapter.

[44 FR 41644, July 17, 1979, as amended at 57 FR 8202, Mar. 6, 1992]

#### § 431.108 Effective date of provider agreements.

(a) *Applicability—(1) General rule.* Except as provided in paragraph (a)(2) of this section, this section applies to Medicaid provider agreements with entities that, as a basis for participation in Medicaid—

(i) Are subject to survey and certification by CMS or the State survey agency; or

(ii) Are deemed to meet Federal requirements on the basis of accreditation by an accrediting organization whose program has CMS approval at the time of accreditation survey and accreditation decision.

(2) *Exception.* A Medicaid provider agreement with a laboratory is effective only while the laboratory has in effect a valid CLIA certificate issued under part 493 of this chapter, and only for the specialty and subspecialty tests it is authorized to perform.

(b) *All requirements are met on the date of survey.* The agreement is effective on the date the onsite survey (including the Life Safety Code survey if applicable) is completed, if on that date the provider meets—

(1) All applicable Federal requirements as set forth in this chapter; and

(2) Any other requirements imposed by the State for participation in the Medicaid program. (If the provider has a time-limited agreement, the new agreement is effective on the day following expiration of the current agreement.)

(c) *All requirements are not met on the date of survey.* If on the date the survey is completed the provider fails to meet any of the requirements specified in paragraph (b) of this section, the following rules apply:

(1) An NF provider agreement is effective on the date on which—

(i) The NF is found to be in substantial compliance as defined in §488.301 of this chapter; and

(ii) CMS or the State survey agency receives from the NF, if applicable, an approvable waiver request.

(2) For an agreement with any other provider, the effective date is the earlier of the following:

(i) The date on which the provider meets all requirements.

(ii) The date on which a provider is found to meet all conditions of participation but has lower level deficiencies, and CMS or the State survey agency receives from the provider an acceptable plan of correction for the lower level deficiencies, or an approvable waiver request, or both. (The date of receipt is the effective date of the agreement, regardless of when CMS approves the plan of correction or waiver request, or both.)

(d) *Accredited provider requests participation in the Medicaid program—(1) General rule.* If a provider is currently accredited by a national accrediting organization whose program had CMS approval at the time of accreditation survey and accreditation decision, and on the basis of accreditation, CMS has deemed the provider to meet Federal requirements, the effective date depends on whether the provider is subject to requirements in addition to those included in the accrediting organization's approved program.

(i) *Provider subject to additional requirements.* For a provider that is subject to additional requirements, Federal or State, or both, the effective date is the date on which the provider meets all requirements, including the additional requirements.

(ii) *Provider not subject to additional requirements.* For a provider that is not subject to additional requirements, the effective date is the date of the provider's initial request for participation if on that date the provider met all Federal requirements.

(2) *Special rule: Retroactive effective date.* If the provider meets the requirements of paragraphs (d)(1) and (d)(1)(i) or (d)(1)(ii) of this section, the effective date may be retroactive for up to one year, to encompass dates on which the provider furnished, to a Medicaid recipient, covered services for which it has not been paid.

[62 FR 43935, Aug. 18, 1997]

#### **§431.110 Participation by Indian Health Service facilities.**

(a) *Basis.* This section is based on section 1902(a)(4) of the Act, proper and efficient administration; 1902(a)(23), free choice of provider; and 1911, reimbursement of Indian Health Service facilities.

(b) *State plan requirements.* A State plan must provide that an Indian Health Service facility meeting State requirements for Medicaid participation must be accepted as a Medicaid provider on the same basis as any other qualified provider. However, when State licensure is normally required, the facility need not obtain a license but must meet all applicable standards for licensure. In determining whether a