

(4) Automated eligibility determination systems approved or operating on or before November 13, 1989, will not qualify for FFP at 75 percent of expenditures after November 13, 1989.

(b) CMS may review an entire system operation or focus its review on parts of the operation. However, at a minimum, CMS will review standards, system requirements and other conditions of reapproval that have demonstrated weakness in a previous review or reviews.

(c) CMS will issue to each Medicaid agency, by the end of the first quarter after the review period, a written notice informing the agency whether its system is reapproved or disapproved. If the system is disapproved, the notice will also include—

(1) CMS's decision to reduce FFP for system operations, and the percentage to which it is reduced, beginning with the next calendar quarter;

(2) The findings of fact upon which the determination was made; and

(3) A statement that State claims in excess of the reduced FFP rate will be disallowed and that any such disallowance will be appealable to the Departmental Appeals Board.

[54 FR 41973, Oct. 13, 1989; 55 FR 1820, Jan. 19, 1990]

**§ 433.120 Procedures for reduction of FFP after reapproval review.**

(a) If CMS determines after the reapproval review that the system no longer meets the conditions of reapproval in § 433.119, CMS will reduce FFP for system operations for at least four quarters. However, no system will be subject to reduction of FFP for at least the first four quarters after the quarter in which the system is initially approved as eligible for 75 percent FFP.

(b) CMS will reduce FFP in expenditures for system operations from 75 percent to no more than 70 percent and no less than 50 percent; however, CMS will not reduce FFP by more than 10 percentage points in any four-quarter period. The percentage to which the FFP is reduced will depend primarily on the following criteria:

(1) The number of conditions judged unsatisfactory;

(2) The extent to which conditions were not met;

(3) The significance of the unsatisfactory conditions in overall mechanized claims processing and information retrieval system operations; and

(4) The actual and potential program impact attributable to the unsatisfactory conditions.

[50 FR 30848, July 30, 1985, as amended at 54 FR 41974, Oct. 13, 1989]

**§ 433.121 Reconsideration of the decision to reduce FFP after reapproval review.**

(a) The agency may appeal to the Departmental Appeals Board under 45 CFR part 16, a disallowance concerning a reduction in FFP claimed for system operation caused by a disapproval of the State's system. If the Board finds such a disallowance to be appropriate, the discretionary determination to reduce FFP by a particular percentage amount (instead of by a lesser percentage) is not subject to review by the Board unless the percentage reduction exceeds the range authorized by section 1903(r)(4)(B) of the Act.

(b) The decisions concerning whether to restore any FFP retroactively and the actual number of quarters for which FFP will be restored under § 433.122 of this subpart are not subject to administrative appeal to the Departmental Appeals Board under 45 CFR part 16.

(c) An agency's request for a reconsideration before the Board under paragraph (a) of this section does not delay implementation of the reduction in FFP. However, any reduction is subject to retroactive adjustment if required by the Board's determination on reconsideration.

[50 FR 30848, July 30, 1985, as amended at 54 FR 41974, Oct. 13, 1989; 55 FR 1820, Jan. 19, 1990]

**§ 433.122 Reapproval of a disapproved system.**

When FFP has been reduced under § 433.120(a), and CMS determines upon subsequent review that the system meets all current performance standards, system requirements and other conditions of reapproval, the following provisions apply:

(a) CMS will resume FFP in expenditures for system operations at the 75

### § 433.123

percent level beginning with the quarter following the review determination that the system again meets conditions of reapproval.

(b) CMS may retroactively waive a reduction of FFP in expenditures for system operations if CMS determines that the waiver could improve the administration of the State Medicaid plan. However, CMS cannot waive this reduction for any quarter before the fourth quarter immediately preceding the quarter in which CMS issues the determination (as part of the review process) stating that the system is reapproved.

[54 FR 41974, Oct. 13, 1989]

### § 433.123 Notification of changes in system requirements, performance standards or other conditions for approval or reapproval.

(a) Whenever CMS modifies system requirements or other conditions for approval under § 433.112 or § 433.116, CMS will—

(1) Publish a notice in the FEDERAL REGISTER making available the proposed changes for public comment;

(2) Respond in a subsequent FEDERAL REGISTER notice to comments received; and

(3) Issue the new or modified requirements or conditions in the State Medicaid Manual.

(b) For changes in system requirements or other conditions for approval, CMS will allow an appropriate period for Medicaid agencies to meet the requirement determining this period on the basis of the requirement's complexity and other relevant factors.

(c) Whenever CMS modifies performance standards and other conditions for reapproval under § 433.119, CMS will notify Medicaid agencies at least one calendar quarter before the review period to which the new or modified standards or conditions apply.

[57 FR 38782, Aug. 27, 1992]

### § 433.127 Termination of FFP for failure to provide access to claims processing and information retrieval systems.

CMS will terminate FFP at any time if the Medicaid agency fails to provide State and Federal representatives with full access to the system, including on-

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site inspection. CMS may request such access at any time to determine whether the conditions in this subpart are being met.

[43 FR 45201, Sept. 29, 1978. Redesignated and amended at 50 FR 30847 and 30848, July 30, 1985]

### § 433.130 Waiver of conditions of initial operation and approval.

(a) CMS will waive requirements for initial operation and approval of systems under § 433.113 for a State meeting the requirements of paragraph (b) of this section and that had a 1976 population of less than one million and made total Federal and State Medicaid expenditures of less than \$100 million in fiscal year 1976. Population figures are those reported by the Bureau of the Census. Expenditures for fiscal year 1976 are those reported by the State for that year.

(b) To be eligible for this waiver, the agency must submit its reasons to CMS in writing and demonstrate to CMS's satisfaction that a system will not significantly improve the efficiency of the administration of the State plan.

(c) If CMS denies the waiver request, the notice of denial will include—

(1) The findings of fact upon which the denial was made; and

(2) The procedures for appeal of the denial.

(d) If CMS determines, after granting a waiver, that a system would significantly improve the administration of the State Medicaid program, CMS may withdraw the waiver and require that a State obtain initial approval of a system within two years of the date of waiver withdrawal.

[50 FR 30848, July 30, 1985, as amended at 54 FR 41974, Oct. 13, 1989]

### 433.131 Waiver for noncompliance with conditions of approval and reapproval.

If a State is unable to comply with the conditions of approval or of reapproval and the noncompliance will cause a percentage reduction in FFP, CMS will waive the FFP reduction in the following circumstances:

(a) *Good cause.* If CMS determines that good cause existed, CMS will waive the FFP reduction attributable to those items for which the good cause