

§ 489.67

42 CFR Ch. IV (10-1-03 Edition)

surety bond, except that any fraud, misrepresentation, or negligence by the HHA in identifying to the Surety (or to the Surety's agent) the amount of Medicare payments upon which the amount of the surety bond is determined will not cause the Surety's liability to CMS to exceed the amount of the bond.

(7) The HHA's failure to exercise available appeal rights under Medicare or to assign such rights to the Surety.

(d) The bond must provide that actions under the bond may be brought by CMS or by CMS's fiscal intermediaries.

(e) The bond must provide the Surety's name, street address or post office box number, city, state, and zip code to which the CMS notice provided for in paragraph (a) of this section is to be sent.

[63 FR 313, Jan. 5, 1998, as amended at 63 FR 29655, June 1, 1998]

§ 489.67 Term and type of bond.

(a) Each participating HHA that does not meet the criteria for waiver under § 489.62 must submit to CMS in a form as CMS may specify, a surety bond for a term beginning January 1, 1998. If an annual bond is submitted for the initial term, it must be effective through the end of the HHA's current fiscal year.

(b) *Type of bond.* The type of bond required to be submitted by an HHA under this subpart may be either—

(1) An annual bond (that is, a bond that specifies an effective annual period corresponding to the HHA's fiscal year); or

(2) A continuous bond (that is, a bond that remains in full force and effect from term to term unless it is terminated or canceled as provided for in the bond or as otherwise provided by law) that is updated by the Surety, via the issuance of a rider, for a particular fiscal year for which the bond amount has changed or will change.

(c) *HHA that seeks to become a participating HHA.*

(1) An HHA that seeks to become a participating HHA must submit a surety bond with its enrollment application (Form CMS-855, OMB number 0938-0685). The term of the initial surety bond must be effective from the effective date of provider agreement as

specified in § 489.13 of this part. However, if the effective date of the provider agreement is less than 30 days before the end of the HHA's current fiscal year, the HHA may obtain a bond effective through the end of the next fiscal year, provided the amount of the bond is the greater of \$75,000 or 20 percent of the amount determined from the computation specified in § 489.65(c) as applicable.

(2) An HHA that seeks to become a participating HHA through the purchase or transfer of assets or ownership interest of a participating or formerly participating HHA must also ensure that the surety bond is effective from the date of such purchase or transfer.

(d) *Change of ownership.* An HHA that undergoes a change of ownership must submit the surety bond to CMS not later than the effective date of the change of ownership and the bond must be effective from the effective date of the change of ownership through the remainder of the HHA's fiscal year.

(e) *Government-operated HHA that loses its waiver.* A government-operated HHA that, as of January 1, 1998, meets the criteria for waiver under § 489.62 but thereafter is determined by CMS to not meet such criteria, must submit a surety bond to CMS within 60 days after it receives notice from CMS that it no longer meets the criteria for waiver.

(f) *Change of Surety.* An HHA that obtains a replacement surety bond from a different Surety to cover the remaining term of a previously obtained bond must submit the new surety bond to CMS within 30 days of obtaining the bond from the new Surety.

(Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh)).

[63 FR 315, Jan. 5, 1998, as amended at 63 FR 10731, Mar. 4, 1998; 63 FR 29656, June 1, 1998; 63 FR 41171, July 31, 1998]

§ 489.68 Effect of failure to obtain, maintain, and timely file a surety bond.

(a) The failure of a participating HHA to obtain, file timely, and maintain a surety bond in accordance with this subpart F and CMS's instructions is sufficient under § 489.53(a)(1) for CMS to terminate the HHA's provider agreement.

(b) The failure of an HHA seeking to become a participating HHA to obtain and file timely a surety bond in accordance with this Subpart F and CMS's instructions is sufficient under § 489.12(a)(3) for CMS to refuse to enter into a provider agreement with the HHA.

§ 489.69 Evidence of compliance.

(a) CMS may at any time require an HHA to make a specific showing of being in compliance with the requirements of this Subpart F and may require the HHA to submit such additional evidence as CMS considers sufficient to demonstrate the HHA's compliance.

(b) If requested by CMS to do so, the failure of an HHA to timely furnish sufficient evidence to CMS to demonstrate compliance with the requirements of this Subpart F is sufficient for CMS to terminate the HHA's provider agreement under § 489.53(a)(1) or to refuse to enter into a provider agreement with the HHA under § 489.12(a)(3), as applicable.

§ 489.70 Effect of payment by the Surety.

A Surety's payment to CMS under a bond for an unpaid claim or an unpaid civil money penalty or assessment, constitutes—

(a) Collection of the unpaid claim or unpaid civil money penalty or assessment (to the extent the Surety's payment on the bond covers such unpaid claim, civil money penalty, or assessment); and

(b) A basis for termination of the HHA's provider agreement under § 489.53(a)(1).

§ 489.71 Surety's standing to appeal Medicare determinations.

A Surety has standing to appeal any matter that the HHA could appeal, provided the Surety satisfies all jurisdictional and procedural requirements that would otherwise have applied to the HHA, and provided the HHA is not, itself, actively pursuing its appeal rights under this chapter, and provided further that, with respect to unpaid claims, the Surety has paid CMS all amounts owed to CMS by the HHA on

such unpaid claims, up to the amount of the bond.

[63 FR 29656, June 1, 1998]

§ 489.72 Effect of review reversing determination.

In the event a Surety has paid CMS on the basis of liability incurred under a bond obtained by an HHA under this subpart F, and to the extent the HHA that obtained such bond (or the Surety under § 489.71) is subsequently successful in appealing the determination that was the basis of the unpaid claim or unpaid civil money penalty or assessment that caused the Surety to pay CMS under the bond, CMS will refund to the Surety the amount the Surety paid to CMS to the extent such amount relates to the matter that was successfully appealed by the HHA (or by the Surety), provided all review, including judicial review, has been completed on such matter. Any additional amounts owing as a result of the appeal will be paid to the HHA.

§ 489.73 Effect of conditions of payment.

If a Surety has paid an amount to CMS on the basis of liability incurred under a bond obtained by an HHA under this subpart F, and CMS subsequently collects from the HHA, in whole or in part, on such unpaid claim, civil money penalty, or assessment that was the basis for the Surety's liability, CMS reimburses the Surety such amount as CMS collected from the HHA, up to the amount paid by the Surety to CMS, provided the Surety has no other liability to CMS under the bond.

(Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh)).

[63 FR 29656, June 1, 1998]

§ 489.74 Incorporation into existing provider agreements.

The requirements of this subpart F are deemed to be incorporated into existing HHA provider agreements effective January 1, 1998.

[63 FR 315, Jan. 5, 1998. Redesignated at 63 FR 29656, June 1, 1998]

Subparts G– H [Reserved]