

(b) In the absence of home and community-based services under a waiver granted under part 441—

(1) Subpart G of this subchapter, the group would otherwise require the level of care furnished in a hospital, NF, or an ICF/MR; or

(2) Subpart H of this subchapter, the group would otherwise require the level of care furnished in a NF and are age 65 or older.

(c) The group receives the waived services.

[57 FR 29155, June 30, 1992]

**§ 436.220 Individuals who would meet the income and resource requirements under AFDC if child care costs were paid from earnings.**

(a) The agency may provide Medicaid to any group or groups of individuals specified under § 436.201(a)(4), (a)(5), and (a)(6) who would meet the income and resource requirements under the State's AFDC plan if their work-related child care costs were paid from their earnings rather than by a State agency as a service expenditure.

(b) The agency may use this option only if the State's AFDC plan deducts work-related child care costs from income to determine the amount of AFDC.

[43 FR 45218, Sept. 29, 1978, as amended at 58 FR 4935, Jan. 19, 1993]

**§ 436.222 Individuals under age 21 who meet the income and resource requirements of AFDC.**

(a) The agency may provide Medicaid to individuals under age 21 (or at State option, under age 20, 19, or 18) or reasonable categories of these individuals as specified in paragraph (b) of this section, who are not receiving cash assistance but who meet the income and resource requirements of the State's approved AFDC plan.

(b) The agency may cover all individuals described in paragraph (a) of this section or reasonable classifications of those individuals. Examples of reasonable classifications are as follows:

(1) Individuals in foster homes or private institutions for whom a public agency is assuming a full or partial financial responsibility. If the agency covers these individuals, it may also provide Medicaid to individuals of the

same age in foster homes or private institutions by private nonprofit agencies.

(2) Individuals in adoptions subsidized in full or in part by a public agency.

(3) Individuals in nursing facilities when nursing facility services are provided under the plan to individuals within the age group selected under this provision. If the agency covers these individuals, it may also provide Medicaid to individuals in intermediate care facilities for the mentally retarded.

(4) Individuals receiving active treatment as inpatients in psychiatric facilities or programs, if inpatient psychiatric services for individuals under 21 are provided under the plan.

[46 FR 47990, Sept. 30, 1981, as amended at 58 FR 4935, Jan. 19, 1993]

**§ 436.224 Individuals under age 21 who are under State adoption assistance agreements.**

(a) The agency may provide Medicaid to individuals under the age of 21 (or, at State option, age 20, 19, or 18)—

(1) For whom an adoption agreement (other than an agreement under title IV-E) between the State and adoptive parent(s) is in effect;

(2) Who, the State agency responsible for adoption assistance has determined, cannot be placed with adoptive parents without Medicaid because the child has special needs for medical or rehabilitative care; and

(3) Who meet either of the following:

(i) Were eligible for Medicaid under the State plan before the adoption agreement was entered into; or

(ii) Would have been eligible for Medicaid before the adoption agreement was entered into, if the eligibility standards and methodologies of the foster care program were used without employing the threshold title IV-A eligibility determination.

(b) For adoption assistance agreements entered into before April 7, 1986—

(1) The agency must deem the requirements of paragraph (a)(1) and (2) of this section to be met if the State adoption assistance agency determines that—