

**§ 436.322**

**42 CFR Ch. IV (10–1–04 Edition)**

**§ 436.322 Medically needy coverage of the disabled.**

If the agency provides Medicaid to the medically needy, it may provide Medicaid to disabled individuals who meet—

- (a) The requirements for disability, as specified in §§ 436.540 and 436.541; and
- (b) The income and resource requirements of subpart I of this part.

[46 FR 47991, Sept. 30, 1981]

**§ 436.330 Coverage for certain aliens.**

If an agency provides Medicaid to the medically needy, it must provide the services necessary for the treatment of an emergency medical condition, as defined in § 440.255(c) of this chapter to those aliens described in § 436.406(c) of this subpart.

[55 FR 36820, Sept. 7, 1990]

**Subpart E—General Eligibility Requirements**

**§ 436.400 Scope.**

This subpart prescribes general requirements for determining the eligibility of both categorically needy and medically needy individuals specified in subparts B, C, and D of the part.

**§ 436.401 General rules.**

(a) The agency may not impose any eligibility requirement that is prohibited under title XIX.

(b) The agency must base any optional group covered under subparts B and C of this part on reasonable classifications that do not result in arbitrary or inequitable treatment of individuals and groups and are consistent with the objectives of title XIX.

(c) The agency must not use requirements for determining eligibility for optional coverage groups that are more restrictive than those used under the State plans for OAA, AFDC, AB, APTD, or AABD.

**§ 436.402 [Reserved]**

**§ 436.403 State residence.**

(a) *Requirement.* The agency must provide Medicaid to eligible residents of the State, including residents who are absent from the State. The condi-

tions under which payment for service is provided to out-of-State residents are set forth in § 431.52 of this chapter.

(b) *Definition.* For purposes of this section—*Institution* has the same meaning as *Institution* and *Medical institution*, as defined in § 435.1009 of this chapter. For purposes of State placement, the term also includes “foster care homes”, licensed as set forth in 45 CFR 1355.20, and providing food, shelter and supportive services to one or more persons unrelated to the proprietor.

(c) *Incapability of indicating intent.* For purposes of this section, an individual is considered incapable of indicating intent if the individual—

(1) Has an I.Q. of 49 or less or has a mental age of 7 or less, based on tests acceptable to the mental retardation agency in the State;

(2) Is judged legally incompetent; or

(3) Is found incapable of indicating intent based on medical documentation obtained from a physician, psychologist, or other person licensed by the State in the field of mental retardation.

(d) *Who is a State resident.* A resident of a State is any individual who:

(1) Meets the conditions in paragraphs (e) through (h) of this section; or

(2) Meets the criteria specified in an interstate agreement under paragraph (j) of this section.

(e) *Placement by a State in an out-of-state institution—(1) General rule.* Any agency of the State, including an entity recognized under State law as being under contract with the State for such purposes, that arranges for an individual to be placed in an institution located in another State, is recognized as acting on behalf of the State in making a placement. The State arranging or actually making the placement is considered as the individual’s State of residence.

(2) Any action beyond providing information to the individual and the individual’s family would constitute arranging or making a State placement. However, the following actions do not constitute State placement:

(i) Providing basic information to individuals about another State’s Medicaid program, and information about