

§ 440.1

42 CFR Ch. IV (10–1–04 Edition)

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**Subpart B—Requirements and Limits
Applicable to All Services**

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AUTHORITY: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

SOURCE: 43 FR 45224, Sept. 29, 1978, unless otherwise noted.

Subpart A—Definitions

§ 440.1 Basis and purpose.

This subpart interprets and implements the following sections of the Act:

- 1905(a) Services included in the term “medical assistance.”
- 1905 (c), (d), (f) through (i), (l), and (m) Definitions of institutions and services that are included in the term “medical assistance.”
- 1913 “Swing-bed” services. (See §§ 447.280 and 482.66 of this chapter for related provisions on “swing-bed” services.)
- 1915(c) Home and community-based services listed as “medical assistance” and furnished under waivers under that section to individuals who would otherwise require the level of care furnished in a hospital, NF, or ICF/MR.
- 1915(d) Home and community-based services listed as “medical assistance” and furnished under waivers under that section to individuals age 65 or older who would otherwise require the level of care furnished in a NF.

[57 FR 29155, June 30, 1992, as amended at 61 FR 38398, July 24, 1996]

§ 440.2 Specific definitions; definitions of services for FFP purposes.

(a) Specific definitions.

Inpatient means a patient who has been admitted to a medical institution as an inpatient on recommendation of a physician or dentist and who—

(1) Receives room, board and professional services in the institution for a 24 hour period or longer, or

(2) Is expected by the institution to receive room, board and professional services in the institution for a 24 hour period or longer even though it later develops that the patient dies, is discharged or is transferred to another facility and does not actually stay in the institution for 24 hours.

Outpatient means a patient of an organized medical facility, or distinct part of that facility who is expected by the facility to receive and who does receive professional services for less than a 24-hour period regardless of the hour of admission, whether or not a bed is used, or whether or not the patient remains in the facility past midnight.

Patient means an individual who is receiving needed professional services that are directed by a licensed practitioner of the healing arts toward the maintenance, improvement, or protection of health, or lessening of illness, disability, or pain. (See also § 435.1009 of this subchapter for definitions relating to institutional care.)

(b) *Definitions of services for FFP purposes.* Except as limited in part 441, FFP is available in expenditures under the State plan for medical or remedial care and services as defined in this subpart.

[43 FR 45224, Sept. 29, 1978, as amended at 52 FR 47934, Dec. 17, 1987]

§ 440.10 Inpatient hospital services, other than services in an institution for mental diseases.

(a) *Inpatient hospital services* means services that—

(1) Are ordinarily furnished in a hospital for the care and treatment of inpatients;

(2) Are furnished under the direction of a physician or dentist; and

(3) Are furnished in an institution that—

(i) Is maintained primarily for the care and treatment of patients with disorders other than mental diseases;

(ii) Is licensed or formally approved as a hospital by an officially designated authority for State standard-setting;

(iii) Meets the requirements for participation in Medicare as a hospital; and

(iv) Has in effect a utilization review plan, applicable to all Medicaid patients, that meets the requirements of § 482.30 of this chapter, unless a waiver has been granted by the Secretary.

(b) Inpatient hospital services do not include SNF and ICF services furnished by a hospital with a swing-bed approval.

[47 FR 21050, May 17, 1982, as amended at 47 FR 31532, July 20, 1982; 51 FR 22041, June 17, 1986, 52 FR 47934, Dec. 17, 1987; 60 FR 61486, Nov. 30, 1995]

§ 440.20 Outpatient hospital services and rural health clinic services.

(a) *Outpatient hospital services* means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that—

(1) Are furnished to outpatients;

(2) Are furnished by or under the direction of a physician or dentist; and

(3) Are furnished by an institution that—

(i) Is licensed or formally approved as a hospital by an officially designated authority for State standard-setting; and

(ii) Meets the requirements for participation in Medicare as a hospital; and

(4) May be limited by a Medicaid agency in the following manner: A Medicaid agency may exclude from the definition of “outpatient hospital services” those types of items and services that are not generally furnished by most hospitals in the State.

(b) *Rural health clinic services.* If nurse practitioners or physician assistants (as defined in § 481.1 of this chapter) are not prohibited by State law from furnishing primary health care, “rural health clinic services” means the following services when furnished by a rural health clinic that has been certified in accordance with part 491 of this chapter.

(1) Services furnished by a physician within the scope of practice of his profession under State law, if the physician performs the services in the clinic or the services are furnished away from the clinic and the physician has an agreement with the clinic providing

that he will be paid by it for such services.

(2) Services furnished by a physician assistant, nurse practitioner, nurse midwife or other specialized nurse practitioner (as defined in §§ 405.2401 and 491.2 of this chapter) if the services are furnished in accordance with the requirements specified in § 405.2414(a) of this chapter.

(3) Services and supplies that are furnished as an incident to professional services furnished by a physician, physician assistant, nurse practitioner, nurse midwife, or specialized nurse practitioner. (See §§ 405.2413 and 405.2415 of this chapter for the criteria for determining whether services and supplies are included under this paragraph.)

(4) Part-time or intermittent visiting nurse care and related medical supplies (other than drugs and biologicals) if:

(i) The clinic is located in an area in which the Secretary has determined that there is a shortage of home health agencies (see § 405.2417 of this chapter):

(ii) The services are furnished by a registered nurse or licensed practical nurse or a licensed vocational nurse employed by, or otherwise compensated for the services by, the clinic;

(iii) The services are furnished under a written plan of treatment that is established and reviewed at least every 60 days by a supervising physician of the clinic or that is established by a physician, physician assistant, nurse practitioner, nurse midwife, or specialized nurse practitioner and reviewed and approved at least every 60 days by a supervising physician of the clinic; and

(iv) The services are furnished to a homebound recipient. For purposes of visiting nurse care, a “homebound” recipient means one who is permanently or temporarily confined to his place of residence because of a medical or health condition. He may be considered homebound if he leaves the place of residence infrequently. For this purpose, “place of residence” does not include a hospital or a skilled nursing facility.

(c) *Other ambulatory services furnished by a rural health clinic.* If the State plan covers rural health clinic services, other ambulatory services means ambulatory services other than rural