

(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

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health clinic services, as defined in paragraph (b) of this section, that are otherwise included in the plan and meet specific State plan requirements for furnishing those services. Other ambulatory services furnished by a rural health clinic are not subject to the physician supervision requirements specified in §491.8(b) of this chapter, unless required by State law or the State plan.

[43 FR 45224, Sept. 29, 1978, as amended at 47 FR 21050, May 17, 1982; 52 FR 47934, Dec. 17, 1987; 60 FR 61486, Nov. 30, 1995]

**§ 440.30 Other laboratory and X-ray services.**

Other laboratory and X-ray services means professional and technical laboratory and radiological services—

(a) Ordered and provided by or under the direction of a physician or other licensed practitioner of the healing arts within the scope of his practice as defined by State law or ordered by a physician but provided by referral laboratory;

(b) Provided in an office or similar facility other than a hospital outpatient department or clinic; and

(c) Furnished by a laboratory that meets the requirements of part 493 of this chapter.

[46 FR 42672, Aug. 24, 1981, as amended at 57 FR 7135, Feb. 28, 1992]

**§ 440.40 Nursing facility services for individuals age 21 or older (other than services in an institution for mental disease), EPSDT, and family planning services and supplies.**

(a) *Nursing facility services.* (1) “Nursing facility services for individuals age 21 or older, other than services in an institution for mental diseases”, means services that are—

(i) Needed on a daily basis and required to be provided on an inpatient basis under §§409.31 through 409.35 of this chapter.

(ii) Provided by—

(A) A facility or distinct part (as defined in §483.5(b) of this chapter) that meets the requirements for participation under subpart B of part 483 of this chapter, as evidenced by a valid agreement between the Medicaid agency and the facility for providing nursing facil-

ity services and making payments for services under the plan; or

(B) If specified in the State plan, a swing-bed hospital that has an approval from CMS to furnish skilled nursing facility services in the Medicare program; and

(iii) Ordered by and provided under the direction of a physician.

(2) Nursing facility services include services provided by any facility located on an Indian reservation and certified by the Secretary as meeting the requirements of subpart B of part 483 of this chapter.

(b) *EPSDT.* “Early and periodic screening and diagnosis and treatment” means—

(1) Screening and diagnostic services to determine physical or mental defects in recipients under age 21; and

(2) Health care, treatment, and other measures to correct or ameliorate any defects and chronic conditions discovered. (See subpart B of part 441 of this chapter.)

(c) *Family planning services and supplies for individuals of child-bearing age.* [Reserved]

[59 FR 56233, Nov. 10, 1994; 60 FR 50117, Sept. 28, 1995, as amended at 61 FR 59198, Nov. 21, 1996; 68 FR 46071, Aug. 4, 2003]

**§ 440.50 Physicians’ services and medical and surgical services of a dentist.**

(a) “Physicians’ services,” whether furnished in the office, the recipient’s home, a hospital, a skilled nursing facility, or elsewhere, means services furnished by a physician—

(1) Within the scope of practice of medicine or osteopathy as defined by State law; and

(2) By or under the personal supervision of an individual licensed under State law to practice medicine or osteopathy.

(b) “Medical and surgical services of a dentist” means medical and surgical services furnished, on or after January 1, 1988, by a doctor of dental medicine or dental surgery if the services are services that—

(1) If furnished by a physician, would be considered physician’s services.

(2) Under the law of the State where they are furnished, may be furnished