

manner similar to that in paragraph (a)(3) of this section.

(5) Non-Federal expenditures means the total amount of funds expended by the State and its political subdivisions, excluding Federal funds received directly or indirectly from any source.

(6) Expenditures for the current calendar quarter exclude Federal funds received directly or indirectly from any source.

(b) As a basis for determining the correct amount of Federal payments, each State must submit estimated and actual cost data and other information necessary for this purpose in the form and at the times specified in this subchapter and by CMS guidelines.

(c) The agency must have on file adequate records to substantiate compliance with the requirements of § 441.182 and to ensure that all necessary adjustments have been made.

(d) Facilities that did not meet the requirements of §§ 441.151–441.156 in the base year, but are providing inpatient psychiatric services under those sections in the current quarter, must be included in the maintenance of effort computation if, during the base year, they were—

(1) Providing inpatient psychiatric services for individuals under age 21; and

(2) Receiving State aid.

**§ 441.182 Maintenance of effort: Computation.**

(a) For expenditures for inpatient psychiatric services for individuals under age 21, in any calendar quarter, FFP is available only to the extent that the total State Medicaid expenditures in the current quarter for inpatient psychiatric services and outpatient psychiatric treatment for individuals under age 21 exceed the sum of the following:

(1) The total number of individuals receiving inpatient psychiatric services in the current quarter times the average quarterly per capita non-Federal expenditures for the base year; and

(2) The average non-Federal quarterly expenditures for the base year for outpatient psychiatric services for individuals under age 21.

(b) FFP is available for 100 percent of the increase in expenditures over the

base year period, but may not exceed the Federal medical assistance percentage times the expenditures under this subpart for inpatient psychiatric services for individuals under age 21.

**Subpart E—Abortions**

**§ 441.200 Basis and purpose.**

This subpart implements section 402 of Pub. L. 97–12, and subsequent laws that appropriate funds for the Medicaid program, including section 204 of Pub. L. 98–619. All of these laws prohibit the use of Federal funds to pay for abortions except when continuation of the pregnancy would endanger the mother's life.

[52 FR 47935, Dec. 17, 1987]

**§ 441.201 Definition.**

As used in this subpart, “physician” means a doctor of medicine or osteopathy who is licensed to practice in the State.

[52 FR 47935, Dec. 17, 1987]

**§ 441.202 General rule.**

FFP is not available in expenditures for an abortion unless the conditions specified in §§ 441.203 and 441.206 are met.

[52 FR 47935, Dec. 17, 1987]

**§ 441.203 Life of the mother would be endangered.**

FFP is available in expenditures for an abortion when a physician has found, and certified in writing to the Medicaid agency, that on the basis of his professional judgment, the life of the mother would be endangered if the fetus were carried to term. The certification must contain the name and address of the patient.

**§§ 441.204–441.205 [Reserved]**

**§ 441.206 Documentation needed by the Medicaid agency.**

FFP is not available in any expenditures for abortions or other medical procedures otherwise provided for under § 441.203 if the Medicaid agency has paid without first having received

**§ 441.207**

the certifications and documentation specified in that section.

[52 FR 47935, Dec. 17, 1987]

**§ 441.207 Drugs and devices and termination of ectopic pregnancies.**

FFP is available in expenditures for drugs or devices to prevent implantation of the fertilized ovum and for medical procedures necessary for the termination of an ectopic pregnancy.

**§ 441.208 Recordkeeping requirements.**

Medicaid agencies must maintain copies of the certifications and documentation specified in § 441.203 for 3 years under the recordkeeping requirements at 45 CFR 74.20.

[52 FR 47935, Dec. 17, 1987]

**Subpart F—Sterilizations**

SOURCE: 43 FR 52171, Nov. 8, 1978, unless otherwise noted.

**§ 441.250 Applicability.**

This subpart applies to sterilizations and hysterectomies reimbursed under Medicaid.

**§ 441.251 Definitions.**

As used in this subpart:

*Hysterectomy* means a medical procedure or operation for the purpose of removing the uterus.

*Institutionalized individual* means an individual who is (a) involuntarily confined or detained, under a civil or criminal statute, in a correctional or rehabilitative facility, including a mental hospital or other facility for the care and treatment of mental illness; or (b) confined, under a voluntary commitment, in a mental hospital or other facility for the care and treatment of mental illness.

*Mentally incompetent individual* means an individual who has been declared mentally incompetent by a Federal, State, or local court of competent jurisdiction for any purpose, unless the individual has been declared competent for purposes which include the ability to consent to sterilization.

*Sterilization* means any medical procedure, treatment, or operation for the purpose of rendering an individual permanently incapable of reproducing.

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**§ 441.252 State plan requirements.**

A State plan must provide that the Medicaid agency will make payment under the plan for sterilization procedures and hysterectomies only if all the requirements of this subpart were met.

**§ 441.253 Sterilization of a mentally competent individual aged 21 or older.**

FFP is available in expenditures for the sterilization of an individual only if—

(a) The individual is at least 21 years old at the time consent is obtained;

(b) The individual is not a mentally incompetent individual;

(c) The individual has voluntarily given informed consent in accordance with all the requirements prescribed in §§ 441.257 and 441.258; and

(d) At least 30 days, but not more than 180 days, have passed between the date of informed consent and the date of the sterilization, except in the case of premature delivery or emergency abdominal surgery. An individual may consent to be sterilized at the time of a premature delivery or emergency abdominal surgery, if at least 72 hours have passed since he or she gave informed consent for the sterilization. In the case of premature delivery, the informed consent must have been given at least 30 days before the expected date of delivery.

**§ 441.254 Mentally incompetent or institutionalized individuals.**

FFP is not available for the sterilization of a mentally incompetent or institutionalized individual.

**§ 441.255 Sterilization by hysterectomy.**

(a) FFP is not available in expenditures for a hysterectomy if—

(1) It was performed solely for the purpose of rendering an individual permanently incapable of reproducing; or

(2) If there was more than one purpose to the procedure, it would not have been performed but for the purpose of rendering the individual permanently incapable of reproducing.

(b) FFP is available in expenditures for a hysterectomy not covered by paragraph (a) of this section only under