

§ 489.68

42 CFR Ch. IV (10–1–04 Edition)

(b) *Type of bond.* The type of bond required to be submitted by an HHA under this subpart may be either—

(1) An annual bond (that is, a bond that specifies an effective annual period corresponding to the HHA's fiscal year); or

(2) A continuous bond (that is, a bond that remains in full force and effect from term to term unless it is terminated or canceled as provided for in the bond or as otherwise provided by law) that is updated by the Surety, via the issuance of a rider, for a particular fiscal year for which the bond amount has changed or will change.

(c) *HHA that seeks to become a participating HHA.*

(1) An HHA that seeks to become a participating HHA must submit a surety bond with its enrollment application (Form CMS-855, OMB number 0938-0685). The term of the initial surety bond must be effective from the effective date of provider agreement as specified in § 489.13 of this part. However, if the effective date of the provider agreement is less than 30 days before the end of the HHA's current fiscal year, the HHA may obtain a bond effective through the end of the next fiscal year, provided the amount of the bond is the greater of \$75,000 or 20 percent of the amount determined from the computation specified in § 489.65(c) as applicable.

(2) An HHA that seeks to become a participating HHA through the purchase or transfer of assets or ownership interest of a participating or formerly participating HHA must also ensure that the surety bond is effective from the date of such purchase or transfer.

(d) *Change of ownership.* An HHA that undergoes a change of ownership must submit the surety bond to CMS not later than the effective date of the change of ownership and the bond must be effective from the effective date of the change of ownership through the remainder of the HHA's fiscal year.

(e) *Government-operated HHA that loses its waiver.* A government-operated HHA that, as of January 1, 1998, meets the criteria for waiver under § 489.62 but thereafter is determined by CMS to not meet such criteria, must submit a surety bond to CMS within 60 days after it receives notice from CMS that

it no longer meets the criteria for waiver.

(f) *Change of Surety.* An HHA that obtains a replacement surety bond from a different Surety to cover the remaining term of a previously obtained bond must submit the new surety bond to CMS within 30 days of obtaining the bond from the new Surety.

(Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh)).

[63 FR 315, Jan. 5, 1998, as amended at 63 FR 10731, Mar. 4, 1998; 63 FR 29656, June 1, 1998; 63 FR 41171, July 31, 1998]

§ 489.68 Effect of failure to obtain, maintain, and timely file a surety bond.

(a) The failure of a participating HHA to obtain, file timely, and maintain a surety bond in accordance with this subpart F and CMS's instructions is sufficient under § 489.53(a)(1) for CMS to terminate the HHA's provider agreement.

(b) The failure of an HHA seeking to become a participating HHA to obtain and file timely a surety bond in accordance with this Subpart F and CMS's instructions is sufficient under § 489.12(a)(3) for CMS to refuse to enter into a provider agreement with the HHA.

§ 489.69 Evidence of compliance.

(a) CMS may at any time require an HHA to make a specific showing of being in compliance with the requirements of this Subpart F and may require the HHA to submit such additional evidence as CMS considers sufficient to demonstrate the HHA's compliance.

(b) If requested by CMS to do so, the failure of an HHA to timely furnish sufficient evidence to CMS to demonstrate compliance with the requirements of this Subpart F is sufficient for CMS to terminate the HHA's provider agreement under § 489.53(a)(1) or to refuse to enter into a provider agreement with the HHA under § 489.12(a)(3), as applicable.

§ 489.70 Effect of payment by the Surety.

A Surety's payment to CMS under a bond for an unpaid claim or an unpaid