

Subpart A—General Provisions

§ 442.1 Basis and purpose.

(a) This part states requirements for provider agreements for facility certification relating to the provision of services furnished by nursing facilities and intermediate care facilities for the mentally retarded. This part is based on the following sections of the Act:

- Section 1902(a)(4), administrative methods for proper and efficient operation of the State plan;
- Section 1902(a)(27), provider agreements;
- Section 1902(a)(28), nursing facility standards;
- Section 1902(a)(33)(B), State survey agency functions; Section 1902(i), circumstances and procedures for denial of payment and termination of provider agreements in certain cases;
- Section 1905(c), definition of nursing facility;
- Section 1905(d), definition of intermediate care facility for the mentally retarded;
- Section 1905 (f), definition of nursing facility services;
- Section 1910, certification and approval of ICFs/MR and of RHCs;
- Section 1913, hospital providers of nursing facility services;
- Section 1919 (g) and (h), survey, certification and enforcement of nursing facilities; and
- Section 1922, correction and reduction plans for intermediate care facilities for the mentally retarded.

(b) Section 431.610 of this subchapter contains requirements for designating the State licensing agency to survey these facilities and for certain survey agency responsibilities.

[43 FR 45233, Sept. 29, 1978, as amended at 47 FR 31533, July 20, 1982; 59 FR 56235, Nov. 10, 1994]

§ 442.2 Terms.

In this part—

Facility refers to a nursing facility, and an intermediate care facility for the mentally retarded or persons with related conditions (ICF/MR).

Facility, and any specific type of facility referred to, may include a distinct part of a facility as specified in § 440.40 or § 440.150 of this subchapter.

Immediate jeopardy means a situation in which immediate corrective action is necessary because the provider's noncompliance with one or more requirements of participation or conditions of participation has caused, or is

likely to cause, serious injury, harm, impairment, or death to an individual receiving care in a facility.

New admission means the admission of a Medicaid recipient who has never been in the facility or, if previously admitted, had been discharged or had voluntarily left the facility. The term does not include the following:

(a) Individuals who were in the facility before the effective date of denial of payment for new admissions, even if they become eligible for Medicaid after that date.

(b) If the approved State plan includes payments for reserved beds, individuals who, after a temporary absence from the facility, are readmitted to beds reserved for them in accordance with § 447.40(a) of this chapter.

[43 FR 45233, Sept. 29, 1978, as amended at 51 FR 24491, July 3, 1986; 53 FR 1993, Jan. 25, 1988; 54 FR 5358, Feb. 2, 1989; 56 FR 48865, Sept. 26, 1991; 59 FR 56235, Nov. 10, 1994]

Subpart B—Provider Agreements

§ 442.10 State plan requirement.

A State plan must provide that requirements of this subpart are met.

§ 442.12 Provider agreement: General requirements.

(a) *Certification and recertification.* Except as provided in paragraph (b) of this section, a Medicaid agency may not execute a provider agreement with a facility for nursing facility services nor make Medicaid payments to a facility for those services unless the Secretary or the State survey agency has certified the facility under this part to provide those services. (See § 442.101 for certification by the Secretary or by the State survey agency).

(b) *Exception.* The certification requirement of paragraph (a) of this section does not apply with respect to religious nonmedical institutions as defined in § 440.170(b) of this chapter.

(c) *Conformance with certification condition.* An agreement must be in accordance with the certification provisions set by the Secretary or the survey agency under subpart C of this part for ICFs/MR or subpart E of part 488 of this chapter for NFs.