(2) Refuses to cooperate as required under § 433.147(a) unless cooperation has been waived;

(b) Provide Medicaid to any individual who—

(1) Cannot legally assign his own rights; and

(2) Would otherwise be eligible for Medicaid but for the refusal, by a person legally able to assign his rights, to assign his rights or to cooperate as required by this subpart; and

(c) In denying or terminating eligibility, comply with the notice and hearing requirements of part 431, subpart E of this subchapter.

COOPERATIVE AGREEMENTS AND INCENTIVE PAYMENTS

§ 433.151 Cooperative agreements and incentive payments—State plan requirements.

For medical assistance furnished on or after October 1, 1984—

(a) A State plan must provide for entering into written cooperative agreements for enforcement of rights to and collection of third party benefits with at least one of the following entities: The State title IV-D agency, any appropriate agency of any State, and appropriate courts and law enforcement officials. The agreements must be in accordance with the provisions of § 433.152.

(b) A State plan must provide that the requirements for making incentive payments and for distributing third party collections specified in §§ 433.153 and 433.154 are met.

[50 FR 46665, Nov. 12, 1985; 50 FR 49389, Dec. 2, 1985]

§ 433.152 Requirements for cooperative agreements for third party collections.

(a) Except as specified in paragraph (b) of this section, the State agency may develop the specific terms of cooperative agreements with other agencies as it determines appropriate for individual circumstances.

(b) Agreements with title IV-D agencies must specify that the Medicaid agency will—

(1) Meet the requirements of the Office of Child Support Enforcement for cooperative agreements under 45 CFR Part 306; and

(2) Provide reimbursement to the IV-D agency only for those child support services performed that are not reimbursable by the Office of Child Support Enforcement under title IV-D of the Act and that are necessary for the collection of amounts for the Medicaid program.

[50 FR 46666, Nov. 12, 1985]

§ 433.153 Incentive payments to States and political subdivisions.

(a) *When payments are required.* The agency must make an incentive payment to a political subdivision, a legal entity of the subdivision such as a prosecuting or district attorney or a friend of the court, or another State that enforces and collects medical support and payments for the agency.

(b) *Amount and source of payment.* The incentive payment must equal 15 percent of the amount collected, and must be made from the Federal share of that amount.

(c) *Payment to two or more jurisdictions.* If more than one State or political subdivision is involved in enforcing and collecting support and payments:

(1) The agency must pay all of the incentive payment to the political subdivision, legal entity of the subdivision, or another State that collected medical support and payments at the request of the agency.

(2) The political subdivision, legal entity or other State that receives the incentive payment must then divide the incentive payment equally with any other political subdivisions, legal entities, or other States that assisted in the collection, unless an alternative allocation is agreed upon by all jurisdictions involved.

§ 433.154 Distribution of collections.

The agency must distribute collections as follows—

(a) To itself, an amount equal to State Medicaid expenditures for the individual on whose right the collection was based.

(b) To the Federal Government, the Federal share of the State Medicaid expenditures, minus any incentive payment made in accordance with § 433.153.

(c) To the recipient, any remaining amount. This amount must be treated as income or resources under part 435 or part 436 of this subchapter, as appropriate.

Subpart E [Reserved]

Subpart F—Refunding of Federal Share of Medicaid Overpayments to Providers

SOURCE: 54 FR 5460, Feb. 3, 1989, unless otherwise noted.

§ 433.300 Basis.

This subpart implements—

(a) Section 1903(d)(2)(A) of the Act, which directs that quarterly Federal payments to the States under title XIX (Medicaid) of the Act are to be reduced or increased to make adjustment for prior overpayments or underpayments that the Secretary determines have been made.

(b) Section 1903(d)(2) (C) and (D) of the Act, which provides that a State has 60 days from discovery of an overpayment for Medicaid services to recover or attempt to recover the overpayment from the provider before adjustment in the Federal Medicaid payment to the State is made; and that adjustment will be made at the end of the 60 days, whether or not recovery is made, unless the State is unable to recover from a provider because the overpayment is a debt that has been discharged in bankruptcy or is otherwise uncollectable.

(c) Section 1903(d)(3) of the Act, which provides that the Secretary will consider the pro rata Federal share of the net amount recovered by a State during any quarter to be an overpayment.

§ 433.302 Scope of subpart.

This subpart sets forth the requirements and procedures under which States have 60 days following discovery of overpayments made to providers for Medicaid services to recover or attempt to recover that amount before the States must refund the Federal share of these overpayments to CMS, with certain exceptions.

§ 433.304 Definitions.

As used in this subpart—

Abuse (in accordance with § 455.2) means provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the Medicaid program, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care.

Discovery (or *discovered*) means identification by any State Medicaid agency official or other State official, the Federal Government, or the provider of an overpayment, and the communication of that overpayment finding or the initiation of a formal recoupment action without notice as described in § 433.316.

Fraud (in accordance with § 455.2) means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable Federal or State law.

Overpayment means the amount paid by a Medicaid agency to a provider which is in excess of the amount that is allowable for services furnished under section 1902 of the Act and which is required to be refunded under section 1903 of the Act.

Provider (in accordance with § 400.203) means any individual or entity furnishing Medicaid services under a provider agreement with the Medicaid agency.

Recoupment means any formal action by the State or its fiscal agent to initiate recovery of an overpayment without advance official notice by reducing future payments to a provider.

Third party (in accordance with § 433.136) means an individual, entity, or program that is or may be liable to pay for all or part of the expenditures for medical assistance furnished under a State plan.

[54 FR 5460, Feb. 3, 1989; 54 FR 8435, Feb. 28, 1989]

§ 433.310 Applicability of requirements.

(a) *General rule.* Except as provided in paragraphs (b) and (c) of this section,