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services under §440.160 of this subchapter.

(b) The exclusion of FFP described in paragraph (a) of this section does not apply during that part of the month in which the individual is not an inmate of a public institution or a patient in an institution for mental diseases.

(c) An individual on conditional release or convalescent leave from an institution for mental diseases is not considered to be a patient in that institution. However, such an individual who is under age 22 and has been receiving inpatient psychiatric services under §440.160 of this subchapter is considered to be a patient in the institution until he is unconditionally released or, if earlier, the date he reaches age 22.


§ 436.1005 Definitions relating to institutional status.

For purposes of FFP, the definitions in §435.1009 of this subchapter apply to this part.

PART 440—SERVICES: GENERAL PROVISIONS

Subpart A—Definitions

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AUTHORITY: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

SOURCE: 43 FR 45224, Sept. 29, 1978, unless otherwise noted.

Subpart A—Definitions

§ 440.1 Basis and purpose.

This subpart interprets and implements the following sections of the Act:

1905(a) Services included in the term “medical assistance.”
1905 (c), (d), (f) through (i), (l), and (m) Definitions of institutions and services that are included in the term “medical assistance.”
1913 “Swing-bed” services. (See §§447.280 and 482.66 of this chapter for related provisions on “swing-bed” services.)
§ 440.20 Outpatient hospital services, other than services in an institution for mental diseases.

(a) Outpatient hospital services means services that—

(1) Are ordinarily furnished in a hospital for the care and treatment of inpatients;

(2) Are furnished under the direction of a physician or dentist; and

(3) Are furnished in an institution that—

(i) Is maintained primarily for the care and treatment of patients with disorders other than mental diseases;

(ii) Is licensed or formally approved as a hospital by an officially designated authority for State standard-setting;

(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.

§ 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.

§ 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 of a facility that is certified to meet the requirements for participation under subpart C of part 442 of this chapter, as evidenced by a valid agreement between the Medicaid agency and the facility for providing nursing facility 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 HCFA 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]

§ 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 either by a physician or by a doctor of dental medicine or dental surgery; and

(3) Are furnished by a doctor of dental medicine or dental surgery who is authorized to furnish those services in the State in which he or she furnished the services.

§ 440.60 Medical or other remedial care provided by licensed practitioners.

(a) "Medical care or any other type remedial care provided by licensed practitioners" means any medical or remedial care or services, other than physicians' services, provided by licensed practitioners within the scope of practice as defined under State law.

(b) Chiropractors' services include only services that—

(1) Are provided by a chiropractor who is licensed by the State and meets standards issued by the Secretary under § 405.232(b) of this chapter; and

(2) Consists of treatment by means of manual manipulation of the spine that the chiropractor is legally authorized by the State to perform.
§ 440.70 Home health services.

(a) "Home health services" means the services in paragraph (b) of this section that are provided to a recipient—

1. At his place of residence, as specified in paragraph (c) of this section; and

2. On his or her physician's orders as part of a written plan of care that the physician reviews every 60 days, except as specified in paragraph (b)(3) of this section.

(b) Home health services include the following services and items. Those listed in paragraphs (b)(1), (2) and (3) of this section are required services; those in paragraph (b)(4) of this section are optional.

1. Nursing service, as defined in the State Nurse Practice Act, that is provided on a part-time or intermittent basis by a home health agency as defined in paragraph (d) of this section, or if there is no agency in the area, a registered nurse who—

(i) Is currently licensed to practice in the State;

(ii) Receives written orders from the patient's physician;

(iii) Documents the care and services provided; and

(iv) Has had orientation to acceptable clinical and administrative recordkeeping from a health department nurse.

2. Home health aide service provided by a home health agency;

3. Medical supplies, equipment, and appliances suitable for use in the home.

(i) A recipient's need for medical supplies, equipment, and appliances must be reviewed by a physician annually.

(ii) Frequency of further physician review of a recipient's continuing need for the items is determined on a case-by-case basis, based on the nature of the item prescribed;

4. Physical therapy, occupational therapy, or speech pathology and audiology services, provided by a home health agency or by a facility licensed by the State to provide medical rehabilitation services. (See §441.15 of this subchapter.)

(c) A recipient's place of residence, for home health services, does not include a hospital, nursing facility, or intermediate care facility for the mentally retarded, except for home health services in an intermediate care facility for the mentally retarded that are not required to be provided by the facility under subpart I of part 483. For example, a registered nurse may provide short-term care for a recipient in an intermediate care facility for the mentally retarded during an acute illness to avoid the recipient's transfer to a nursing facility.

(d) "Home health agency" means a public or private agency or organization, or part of an agency or organization, that meets requirements for participation in Medicare, including the capitalization requirements under §489.28 of this chapter.

(e) A "facility licensed by the State to provide medical rehabilitation services" means a facility that—

1. Provides therapy services for the primary purpose of assisting in the rehabilitation of disabled individuals through an integrated program of—

(i) Medical evaluation and services; and

(ii) Psychological, social, or vocational evaluation and services; and

2. Is operated under competent medical supervision either—

(i) In connection with a hospital; or

(ii) As a facility in which all medical and related health services are prescribed by or under the direction of individuals licensed to practice medicine or surgery in the State.


§ 440.80 Private duty nursing services.

Private duty nursing services means nursing services for recipients who require more individual and continuous care than is available from a visiting nurse or routinely provided by the nursing staff of the hospital or skilled nursing facility. These services are provided—

(a) By a registered nurse or a licensed practical nurse;

(b) Under the direction of the recipient's physician; and

(c) To a recipient in one or more of the following locations at the option of the State—

1. His or her own home;

2. A hospital; or
§ 440.90 Clinic services.

Clinic services means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that are furnished by a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. The term includes the following services furnished to outpatients:

(a) Services furnished at the clinic by or under the direction of a physician or dentist.

(b) Services furnished outside the clinic, by clinic personnel under the direction of a physician, to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.

§ 440.100 Dental services.

(a) “Dental services” means diagnostic, preventive, or corrective procedures provided by or under the supervision of a dentist in the practice of his profession, including treatment of—

(1) The teeth and associated structures of the oral cavity; and

(2) Disease, injury, or impairment that may affect the oral or general health of the recipient.

(b) “Dentist” means an individual licensed to practice dentistry or dental surgery.

§ 440.110 Physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders.

(a) Physical therapy. (1) Physical therapy means services prescribed by a physician or other licensed practitioner of the healing arts within the scope of his or her practice under State law and provided to a recipient by or under the direction of a qualified physical therapist. It includes any necessary supplies and equipment.

(2) A “qualified physical therapist” is an individual who is—

(i) A graduate of a program of physical therapy approved by the Committee on Allied Health Education and Accreditation of the American Medical Association and the American Physical Therapy Association or its equivalent; and

(ii) Where applicable, licensed by the State.

(b) Occupational therapy. (1) Occupational therapy means services prescribed by a physician or other licensed practitioner of the healing arts within the scope of his or her practice under State law and provided to a recipient by or under the direction of a qualified occupational therapist. It includes any necessary supplies and equipment.

(2) A “qualified occupational therapist” is an individual who is—

(i) Registered by the American Occupational Therapy Association; or

(ii) A graduate of a program in occupational therapy approved by the Committee on Allied Health Education and Accreditation of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association.

(c) Services for individuals with speech, hearing, and language disorders. (1) Services for individuals with speech, hearing, and language disorders means diagnostic, screening, preventive, or corrective services provided by or under the direction of a speech pathologist or audiologist, for which a patient is referred by a physician or other licensed practitioner of the healing arts within the scope of his or her practice under State law. It includes any necessary supplies and equipment.

(2) A “speech pathologist or audiologist” is an individual who—

(i) Has a certificate of clinical competence from the American Speech and Hearing Association;

(ii) Has completed the equivalent educational requirements and work experience necessary for the certificate; or

(iii) Has completed the academic program and is acquiring supervised work experience to qualify for the certificate.
§ 440.120 Prescribed drugs, dentures, prosthetic devices, and eyeglasses.

(a) “Prescribed drugs” means simple or compound substances or mixtures of substances prescribed for the cure, mitigation, or prevention of disease, or for health maintenance that are—

(1) Prescribed by a physician or other licensed practitioner of the healing arts within the scope of his practice as defined and limited by Federal and State law;

(2) Dispensed by licensed pharmacists and licensed authorized practitioners in accordance with the State Medical Practice Act; and

(3) Dispensed by the licensed pharmacist or practitioner on a written prescription that is recorded and maintained in the pharmacist’s or practitioner’s records.

(b) “Dentures” are artificial structures made by or under the direction of a dentist to replace a full or partial set of teeth.

(c) “Prosthetic devices” means replacement, corrective, or supportive devices prescribed by a physician or other licensed practitioner of the healing arts within the scope of his practice as defined by State law to—

(1) Artificially replace a missing portion of the body;

(2) Prevent or correct physical deformity or malfunction; or

(3) Support a weak or deformed portion of the body.

(d) “Eyeglasses” means lenses, including frames, and other aids to vision prescribed by a physician skilled in diseases of the eye or an optometrist.

§ 440.130 Diagnostic, screening, preventive, and rehabilitative services.

(a) “Diagnostic services,” except as otherwise provided under this subpart, includes any medical procedures or supplies recommended by a physician or other licensed practitioner of the healing arts, within the scope of his practice under State law, to enable him to identify the existence, nature, or extent of illness, injury, or other health deviation in a recipient.

(b) “Screening services” means the use of standardized tests given under medical direction in the mass examination of a designated population to detect the existence of one or more particular diseases or health deviations or to identify for more definitive studies individuals suspected of having certain diseases.

(c) “Preventive services” means services provided by a physician or other licensed practitioner of the healing arts within the scope of his practice under State law to—

(1) Prevent disease, disability, and other health conditions or their progression;

(2) Prolong life; and

(3) Promote physical and mental health and efficiency.

(d) “Rehabilitative services,” except as otherwise provided under this subpart, includes any medical or remedial services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his practice under State law, for maximum reduction of physical or mental disability and restoration of a recipient to his best possible functional level.

§ 440.140 Inpatient hospital services, nursing facility services, and intermediate care facility services for individuals age 65 or older in institutions for mental diseases.

(a) Inpatient hospital services. “Inpatient hospital services for individuals age 65 or older in institutions for mental diseases” means services provided under the direction of a physician for the care and treatment of recipients in an institution for mental diseases that meets the requirements specified in §482.60(b), (c), and (e) of this chapter and—

(1) Meets the requirements for utilization review in §482.30(a), (b), (d), and (e) of this chapter; or

(2) Has been granted a waiver of those utilization review requirements under section 1903(i)(4) of the Act and subpart H of part 456 of this chapter.

(b) Nursing facility services. “Nursing facility services for individuals age 65 or older in institutions for mental diseases” means nursing facility services as defined in §440.40 and in subpart B of part 483 of this chapter that are provided in institutions for mental diseases, as defined in §435.1009 of this chapter.

[59 FR 56234, Nov. 10, 1994]
§ 440.150 Intermediate care facility (ICF/MR) services.

(a) “ICF/MR services” means those items and services furnished in an intermediate care facility for the mentally retarded if the following conditions are met:

1. The facility fully meets the requirements for a State license to provide services that are above the level of room and board;
2. The primary purpose of the ICF/MR is to furnish health or rehabilitative services to persons with mental retardation or persons with related conditions;
3. The ICF/MR meets the standards specified in subpart I of part 483 of this chapter;
4. The recipient with mental retardation for whom payment is requested is receiving active treatment, as specified in § 483.440 of this chapter;
5. The ICF/MR has been certified to meet the requirements of subpart C of part 442 of this chapter, as evidenced by a valid agreement between the Medicaid agency and the facility for furnishing ICF/MR services and making payments for these services under the plan.

(b) ICF/MR services may be furnished in a distinct part of a facility other than an ICF/MR if the distinct part—

1. Meets all requirements for an ICF/MR, as specified in subpart I of part 483 of this chapter;
2. Is clearly an identifiable living unit, such as an entire ward, wing, floor or building;
3. Consists of all beds and related services in the unit;
4. Houses all recipients for whom payment is being made for ICF/MR services; and
5. Is approved in writing by the survey agency.

[59 FR 56234, Nov. 10, 1994]

§ 440.155 Nursing facility services, other than in institutions for mental diseases.

(a) “Nursing facility services, other than in an institution for mental diseases” means services provided in a facility that—

1. Fully meets the requirements for a State license to provide, on a regular basis, health-related services to individuals who do not require hospital care, but whose mental or physical condition requires services that—
   (i) Are above the level of room and board; and
   (ii) Can be made available only through institutional facilities;
2. Has been certified to meet the requirements of subpart C of part 442 of this chapter as evidenced by a valid agreement between the Medicaid agency and the facility for providing nursing facility services and making payments for services under the plan; and
3. “Nursing facility services” include services—
   (1) Considered appropriate by the State and provided by a religious non-medical institution as defined in § 440.170(b); or
   (2) Provided by a facility located on an Indian reservation that—
      (i) Furnishes, on a regular basis, health-related services; and
      (ii) Is certified by the Secretary to meet the standards in subpart E of part 442 of this chapter.

(b) “Nursing facility services” may include services provided in a distinct part of a facility other than a nursing facility if the distinct part—

1. Meets all requirements for a nursing facility;
2. Is an identifiable unit, such as an entire ward or contiguous ward, a wing, floor, or building;
3. Consists of all beds and related facilities in the unit;
4. Houses all recipients for whom payment is being made for ICF/MR services; and
5. Is approved in writing by the survey agency.

(d) If a State includes as nursing facility services those services provided by a distinct part of a facility other than a nursing facility, it may not require transfer of a recipient within or between facilities if, in the opinion of the attending physician, it might be harmful to the physical or mental health of the recipient.

(e) Nursing facility services may include services provided in a swing-bed.
hospital that has an approval to furnish nursing facility services.

§ 440.160 Inpatient psychiatric services for individuals under age 21.

"Inpatient psychiatric services for individuals under age 21" means services that—

(a) Are provided under the direction of a physician;

(b) Are provided by—

(1) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations, or

(2) A psychiatric facility which is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, or by any other accrediting organization, with comparable standards, that is recognized by the State.

(c) Meet the requirements in § 441.151 of this subchapter.

§ 440.165 Nurse-midwife service.

(a) "Nurse-midwife services" means services that—

(1) Are furnished by a nurse-midwife within the scope of practice authorized by State law or regulations to practice as a nurse-midwife.

(b) Are legally authorized under State law or regulations to practice as a nurse-midwife.

(c) Meet the requirements in § 441.151 of this subchapter.

§ 440.166 Nurse practitioner services.

(a) Definition of nurse practitioner services. Nurse practitioner services means services that are furnished by a registered professional nurse who meets the State's advanced educational and clinical practice requirements, if any, beyond the 2 to 4 years of basic nursing education required of all registered nurses.

(b) Requirements for certified pediatric nurse practitioner. The practitioner must—

(1) If the State specifies qualifications for pediatric nurse practitioners, the practitioner must—
§ 440.170 Any other medical care or remedial care recognized under State law and specified by the Secretary.

(a) Transportation. (1) “Transportation” includes expenses for transportation and other related travel expenses determined to be necessary by the agency to secure medical examinations and treatment for a recipient.

(2) Transportation, as defined in this section, is furnished only by a provider to whom a direct vendor payment can appropriately be made by the agency. If other arrangements are made to assure transportation under §431.53 of this subchapter, FFP is available as an administrative cost.

(b) “Travel expenses” include—

(i) The cost of transportation for the recipient by ambulance, taxicab, common carrier, or other appropriate means;

(ii) The cost of meals and lodging en route to and from medical care, and while receiving medical care; and

(iii) The cost of an attendant to accompany the recipient, if necessary, and the cost of the attendant’s transportation, meals, lodging, and, if the

§ 440.167 Personal care services.

Unless defined differently by a State agency for purposes of a waiver granted under part 441, subpart G of this chapter—

(a) Personal care services means services furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for the mentally retarded, or institution for mental disease that are—

(1) Authorized for the individual by a physician in accordance with a plan of treatment or (at the option of the State) otherwise authorized for the individual in accordance with a service plan approved by the State;

(2) Provided by an individual who is qualified to provide such services and who is not a member of the individual’s family; and

(3) Furnished in a home, and at the State’s option, in another location.

(b) For purposes of this section, family member means a legally responsible relative.

[42 FR 47902, Sept. 11, 1997]
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attendant is not a member of the recipient’s family, salary.

(b) Services furnished in a religious nonmedical health care institution. Services furnished in a religious nonmedical health care institution are services furnished in an institution that:

(1) Is an institution that is described in (c)(3) of section 501 of the Internal Revenue Code of 1986 and is exempt from taxes under section 501(a) of that section.

(2) Is lawfully operated under all applicable Federal, State, and local laws and regulations.

(3) Furnishes only nonmedical nursing items and services to patients who choose to rely solely upon a religious method of healing and for whom the acceptance of medical health services would be inconsistent with their religious beliefs.

(4) Furnishes nonmedical items and services exclusively through nonmedical nursing personnel who are experienced in caring for the physical needs of nonmedical patients.

(5) Furnishes these nonmedical items and services to inpatients on a 24-hour basis.

(6) Does not furnish, on the basis of its religious beliefs, through its personnel or otherwise, medical items and services (including any medical screening, examination, diagnosis, prognosis, treatment, or the administration of drugs) for its patients.

(7) Is not owned by, is not under common ownership with, or does not have an ownership interest of 5 percent or more in, a provider of medical treatment or services and is not affiliated with a provider of medical treatment or services or with an individual who has an ownership interest of 5 percent or more in a provider of medical treatment or services. Permissible affiliations are described in paragraph (c) of this section.

(8) Has in effect a utilization review plan that meets the following criteria:

(i) Provides for the review of admissions to the institution, duration of stays, cases of continuous extended duration, and items and services furnished by the institution.

(ii) Requires that the reviews be made by a committee of the institution that included the individuals responsible for overall administration and for supervision of nursing personnel at the institution.

(iii) Provides that records be maintained of the meetings, decisions, and actions of the utilization review committee.

(iv) Meets other requirements as HCFA finds necessary to establish an effective utilization review plan.

(9) Provides information HCFA may require to implement section 1821 of the Act, including information relating to quality of care and coverage determinations.

(10) Meets other requirements as HCFA finds necessary in the interest of the health and safety of patients who receive services in the institution. These requirements are the conditions of participation found at part 403, subpart G of this chapter.

(c) Affiliations. An affiliation is permissible for purposes of paragraph (b)(7) of this section if it is between one of the following:

(1) An individual serving as an uncompensated director, trustee, officer, or other member of the governing body of an RNHCI and a provider of medical treatment or services.

(2) An individual who is a director, trustee, officer, employee, or staff member of an RNHCI and another individual, with whom he or she has a family relationship, who is affiliated with (or has an ownership interest in) a provider of medical treatment or services.

(3) The RNHCI and an individual or entity furnishing goods or services as a vendor to both providers of medical treatment or services and RNHCIs.

(d) Skilled nursing facility services for individuals under age 21. “Skilled nursing facility services for individuals under 21” means those services specified in § 440.40 that are provided to recipients under 21 years of age.

(e) Emergency hospital services. “Emergency hospital services” means services that—

(1) Are necessary to prevent the death or serious impairment of the health of a recipient; and

(2) Because of the threat to the life or health of the recipient necessitate the use of the most accessible hospital available that is equipped to furnish
the services, even if the hospital does not currently meet—
(i) The conditions for participation under Medicare; or
(ii) The definitions of inpatient or outpatient hospital services under §§440.10 and 440.20.
(f) Critical access hospital (CAH). (1) CAH services means services that (i) are furnished by a provider that meet the requirements for participation in Medicare as a CAH (see subpart F of part 485 of this chapter), and (ii) are of a type that would be paid for by Medicare when furnished to a Medicare beneficiary.
(2) Inpatient CAH services do not include nursing facility services furnished by a CAH with a swing-bed approval.
§440.180 Home or community-based services.
(a) Description and requirements for services. “Home or community-based services” means services, not otherwise furnished under the State's Medicaid plan, that are furnished under a waiver granted under the provisions of part 441, subpart G of this chapter. (1) These services may consist of any or all of the services listed in paragraph (b) of this section, as those services are defined by the agency and approved by HCFA.
(2) The services must meet the standards specified in §441.302(a) of this chapter concerning health and welfare assurances.
(3) The services are subject to the limits on FFP described in §441.310 of this chapter.
(b) Included services. Home or community-based services may include the following services, as they are defined by the agency and approved by HCFA:
(1) Case management services.
(2) Homemaker services.
(3) Home health aide services.
(4) Personal care services.
(5) Adult day health services.
(6) Habilitation services.
(7) Respite care services.
(8) Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness, subject to the conditions specified in paragraph (d) of this section.
(9) Other services requested by the agency and approved by HCFA as cost effective and necessary to avoid institutionalization.
(c) Expanded habilitation services, effective April 7, 1986—(1) General rule. Expanded habilitation services are those services specified in paragraph (c)(2) of this section, that are provided to recipients who have been discharged from a Medicaid-certified NF or ICF/MR, regardless of when the discharge occurred.
(2) Services included. The agency may include as expanded habilitation services the following services:
(i) Prevocational services, which means services that prepare an individual for paid or unpaid employment and that are not job-task oriented but are, instead, aimed at a generalized result. These services may include, for example, teaching an individual such concepts as compliance, attendance, task completion, problem solving and safety. Prevocational services are distinguishable from noncovered vocational services by the following criteria:
(A) The services are provided to persons who are not expected to be able to join the general work force or participate in a transitional sheltered workshop within one year (excluding supported employment programs).
(B) If the recipients are compensated, they are compensated at less than 50 percent of the minimum wage;
(C) The services include activities which are not primarily directed at teaching specific job skills but at underlying habitative goals (for example, attention span, motor skills); and
(D) The services are reflected in a plan of care directed to habitative rather than explicit employment objectives.
(ii) Educational services, which means special education and related services (as defined in sections 602(16)
§ 440.181  Home and community-based services for individuals age 65 or older.

(a) Description of services— Home and community-based services for individuals age 65 or older means services, not otherwise furnished under the State’s Medicaid plan, or services already furnished under the State’s Medicaid plan but in expanded amount, duration, or scope, which are furnished to individuals age 65 or older under a waiver granted under the provisions of part 441, subpart H of this subchapter. Except as provided in §441.310, the services may consist of any of the services listed in paragraph (b) of this section that are requested by the Medicaid agency and approved by HCFA, and furnished to eligible recipients. Service definitions for each service in paragraph (b) of this section must be approved by HCFA.

(b) Included services.

(1) Case management services.

(2) Homemaker services.

(3) Home health aide services.

(4) Personal care services.

(5) Adult day health services.

(6) Respite care services.

(7) Other medical and social services requested by the Medicaid agency and approved by HCFA, which will contribute to the health and well-being of individuals and their ability to reside in a community-based care setting.

[57 FR 29156, June 30, 1992]
§ 440.185 Respiratory care for ventilator-dependent individuals.

(a) "Respiratory care for ventilator-dependent individuals" means services that are not otherwise available under the State's Medicaid plan, provided on a part-time basis in the recipient's home by a respiratory therapist or other health care professional trained in respiratory therapy (as determined by the State) to an individual who—

1. Is medically dependent on a ventilator for life support at least 6 hours per day;
2. Has been so dependent for at least 30 consecutive days (or the maximum number of days authorized under the State plan, whichever is less) as an inpatient in one or more hospitals, NFs, or ICF/MR;
3. Except for the availability of respiratory care services, would require respiratory care as an inpatient in a hospital, NF, or ICF/MR and would be eligible to have payment made for inpatient care under the State plan;
4. Has adequate social support services to be cared for at home;
5. Wishes to be cared for at home; and
6. Receives services under the direction of a physician who is familiar with the technical and medical components of home ventilator support, and who has medically determined that in-home care is safe and feasible for the individual.

(b) For purposes of paragraphs (a)(4) and (5) of this section, a recipient's home does not include a hospital, NF, or ICF/MR.

[59 FR 37717, July 25, 1994]

§ 440.200 Basis, purpose, and scope.

(a) This subpart implements the following statutory requirements—

1. Section 1902(a)(10), regarding comparability of services for groups of recipients, and the amount, duration, and scope of services described in section 1905(a) of the Act that the State plan must provide for recipients;
2. Section 1902(a)(22)(D), which provides for standards and methods to assure quality of services;
3. Section 1903(v)(1), which provides that no payment may be made to a State under this section for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law;
4. Section 1903(v)(2) which provides that FFP will be available for services necessary to treat an emergency medical condition of an alien not described in paragraph (a)(3) of this section if that alien otherwise meets the eligibility requirements of the State plan;
5. Section 1907 on observance of religious beliefs;
6. Section 1915 on exceptions to section 1902(a)(10) and waivers of other requirements of section 1902 of the Act; and
7. Sections 245A(h), 210 and 210A of the Immigration and Nationality Act which provide that certain aliens who are legalized may be eligible for Medicaid.

(b) The requirements and limits of this subpart apply for all services defined in subpart A of this part.

[55 FR 36822, Sept. 7, 1990]

§ 440.210 Required services for the categorically needy.

(a) A State plan must specify that, at a minimum, categorically needy recipients are furnished the following services:

1. The services defined in §§ 440.10 through 440.50, 440.70, and (to the extent nurse-midwives and nurse practitioners are authorized to practice under State law or regulation) the services defined in §§ 440.165 and 440.166, respectively.
2. Pregnancy-related services and services for other conditions that might complicate the pregnancy.

(i) Pregnancy-related services are those services that are necessary for the health of the pregnant woman and fetus, or that have become necessary as a result of the woman having been pregnant. These include, but are not limited to, prenatal care, delivery, postpartum care, and family planning services.