

(c) FFP is not available in expenditures for services furnished by an organ procurement organization on or after April 1, 1988, that does not meet the requirements of part 486 subpart G of this chapter.

[43 FR 45229, Sept. 29, 1978, as amended at 51 FR 22041, June 17, 1986; 53 FR 6549, Mar. 1, 1988; 57 FR 54709, Nov. 20, 1992; 71 FR 31046, May 31, 2006; 71 FR 39229, July 12, 2006]

#### § 441.15 Home health services.

With respect to the services defined in § 440.70 of this subchapter, a State plan must provide that—

(a) Home health services include, as a minimum—

- (1) Nursing services;
- (2) Home health aide services; and
- (3) Medical supplies, equipment, and appliances.

(b) The agency provides home health services to—

- (1) Categorically needy beneficiaries age 21 or over;
- (2) Categorically needy beneficiaries under age 21, if the plan provides skilled nursing facility services for them; individuals; and
- (3) Medically needy beneficiaries to whom skilled nursing facility services are provided under the plan.

(c) The eligibility of a beneficiary to receive home health services does not depend on his need for or discharge from institutional care.

(d) The agency providing home health services meets the capitalization requirements included in § 489.28 of this chapter.

[43 FR 45229, Sept. 29, 1978, as amended at 45 FR 24889, Apr. 11, 1980; 63 FR 310, Jan. 5, 1998]

#### § 441.16 Home health agency requirements for surety bonds; Prohibition on FFP.

(a) *Definitions.* As used in this section, unless the context indicates otherwise—

*Assets* includes but is not limited to any listing that identifies Medicaid beneficiaries to whom home health services were furnished by a participating or formerly participating HHA.

*Participating home health agency* means a “home health agency” (HHA) as that term is defined at § 440.70(d) of this subchapter.

*Surety bond* means one or more bonds issued by one or more surety companies under 31 U.S.C. 9304 to 9308 and 31 CFR parts 223, 224, and 225, provided the bond otherwise meets the requirements of this section.

*Uncollected overpayment* means an “overpayment,” as that term is defined under § 433.304 of this subchapter, plus accrued interest, for which the HHA is responsible, that has not been recouped by the Medicaid agency within a time period determined by the Medicaid agency.

(b) *Prohibition.* FFP is not available in expenditures for home health services under § 440.70 of this subchapter unless the home health agency furnishing these services meets the surety bond requirements of paragraphs (c) through (1) of this section.

(c) *Basic requirement.* Except as provided in paragraph (d) of this section, each HHA that is a Medicaid participating HHA or that seeks to become a Medicaid participating HHA must—

- (1) Obtain a surety bond that meets the requirements of this section and instructions issued by the Medicaid agency; and
- (2) Furnish a copy of the surety bond to the Medicaid agency.

(d) *Requirement waived for Government-operated HHAs.* An HHA operated by a Federal, State, local, or tribal government agency is deemed to have provided the Medicaid agency with a comparable surety bond under State law, and is therefore exempt from the requirements of this section if, during the preceding 5 years, the HHA has not had any uncollected overpayments.

(e) *Parties to the bond.* The surety bond must name the HHA as Principal, the Medicaid agency as Obligee, and the surety company (and its heirs, executors, administrators, successors and assignees, jointly and severally) as Surety.

(f) *Authorized Surety and exclusion of surety companies.* An HHA may obtain a surety bond required under this section only from an authorized Surety.

(1) An authorized Surety is a surety company that—

- (i) Has been issued a Certificate of Authority by the U.S. Department of the Treasury in accordance with 31 U.S.C. 9304 to 9308 and 31 CFR parts 223,