

assure disclosure of the most credible evidence available and to subject testimony to cross-examination. Cross-examination may be on any material matter regardless of the scope of direct examination.

§ 228a.418 What happens to unsponsored written material.

Letters and other written material regarding matters at issue, when not submitted specifically on behalf of one of the parties, become part of the correspondence section of the docket. This material is not part of the evidence or the record.

§ 228a.419 What the record is.

(a) *Official transcript.* HEW designates the official reporter for a hearing. The HDS hearing clerk has the official transcript of testimony, as well as any other materials submitted with the official transcript. The parties and the public may obtain transcripts of testimony from the official reporter at rates which do not exceed the maximum fixed by contract between the reporter and HEW. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.

(b) *Record.* The record for the hearing decision consists of the transcript of testimony, exhibits, and all papers and requests filed in the proceedings except for the correspondence section of the docket. The record includes rulings and any decisions.

AFTER THE HEARING

§ 228a.420 Posthearing briefs.

The presiding officer shall fix the time for filing posthearing briefs. These may contain proposed findings of fact and conclusions of law. The presiding officer may permit filing of reply briefs.

§ 228a.421 Decisions.

(a) *When the Assistant Secretary is presiding officer.* If the Assistant Secretary is the presiding officer, he or she will issue a final decision within 60 days after expiration of the time allowed for filing of posthearing or reply briefs.

(b) *When the Assistant Secretary appoints a presiding officer.* If the Assistant Secretary appoints a presiding officer: (1) After the time for filing posthearing or reply briefs has expired, the presiding officer shall certify the entire record, including his or her recommended findings and proposed decision, to the Assistant Secretary.

(2) The Assistant Secretary shall provide a copy of the recommended findings and proposed decision to all parties and any amici curiae. Within 20 days, a party may file with the As-

sistant Secretary, exceptions to the recommended findings and proposed decision. The party must file a supporting brief or statement with the exceptions.

(3) The Assistant Secretary will review the presiding officer's recommended findings and proposed decision and, within 60 days of receiving them, issue a decision. The Assistant Secretary will provide copies of that decision to all parties and any amici curiae.

(c) *When the decision involves nonconformity or noncompliance.* When the Assistant Secretary decides, after a formal hearing, the nonconformity or substantial noncompliance exists, the final decision will state whether further payments to the State will be withheld entirely, will be limited to categories not affected by the decision, or whether the rate of FFP will be reduced. (See § 228a.306 for details.)

§ 228a.422 When decision involving nonconformity or noncompliance becomes effective.

The Assistant Secretary's decision will specify the effective date for any withholding of Federal payments or reduction of the rate of FFP because of nonconformity or substantial noncompliance. This effective date cannot be earlier than the date of the Assistant Secretary's decision, or later than the first day of the next calendar quarter.

[FR Doc. 78-23943 Filed 8-24-78; 8:45 am]

[4410-07]

Office of Child Support Enforcement

[45 CFR Parts 300, 301, and 304]

GENERAL POLICIES AND PROCEDURES ON GRANTS TO STATES FOR THE CHILD SUPPORT ENFORCEMENT PROGRAM

AGENCY: Office of Child Support Enforcement (OCSE), HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations clarify and reorganize into a single part existing procedural rules on administration of grants to States for the child support enforcement program. They also further define existing policies on appeal procedures for State agencies. Comparable regulations, appearing in part V of this issue are proposed for the medical assistance, social services, and financial assistance programs.

DATE: Comments must be received by October 24, 1978.

ADDRESSES: Address comments to Director, Office of Child Support Enforcement, Department of Health, Education, and Welfare, P.O. Box

23526, Washington, D.C. 20024. Comments will be available for public inspection in Room 2323 of the Department's offices at 330 C Street SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

Mr. John M. Sacchetti, Policy Branch, OCSE, telephone 202-472-4510.

SUPPLEMENTARY INFORMATION: General program description title IV-D of the Social Security Act authorizes Federal/State sharing of the costs of providing child support enforcement services to families eligible for the aid to families with dependent children program and to any other individuals who apply for these services. Federal reimbursement is available for child support enforcement services provided under a State's approved title IV-D State plan. These proposed regulations contain policies and procedures for the approval and disapproval of State plans and plan amendments, for deferring, allowing and disallowing State expenditures, for program and financial reviews by Federal officials, and for appeal of adverse decisions.

REASONS FOR REVISING REGULATIONS

When the original child support enforcement regulations were adopted on June 26, 1975, they included separate provisions (part 301) for State plan approval and grant procedures. Subsequently, on February 17, 1976, in an amendment to the regulations (§ 304.29) OCSE incorporated by reference the disallowance, deferral, and reconsideration of claims provisions contained in 45 CFR Chapter II (§§ 201.14 and 201.15) which were applicable to the programs administered by the Social and Rehabilitation Service (SRS). Under the HEW reorganization order of March 8, 1977, SRS was disbanded and responsibility for its various programs was divided among several HEW agencies. This reorganization necessitates OCSE adopting its own complete set of administrative regulations. In addition, this proposal is in furtherance of the Secretary's "Operation Common Sense" directive on writing HEW regulations in clear, simple language. This proposed rule combines procedures now contained in parts 301, 302, and by reference 201 into a single part 300 which would apply only to the child support enforcement program. Additional content and format changes are described below.

PROPOSED REGULATION FORMAT

Under this proposal, procedures for administering grants to States for child support enforcement programs will all be in a new part 300. Regulations or procedures for administering

grants to States for financial assistance, social services, and medical assistance are also proposed in similar formats, each in a single part.

PROPOSED CONTENT CHANGES

1. *Definitions.* The definitions section has been expanded to cover more terms commonly used throughout this and other parts of chapter III.

2. *Authority to approve or disapprove a State plan or amendment.* Authority to approve and disapprove State plans and amendments is vested in the regional representative. He will, however, consult with the Deputy Director before issuing a disapproval notice. Under prior regulations, the regional representative could approve plans but disapproval was reserved to the Director of OCSE after consultation with the Secretary. The proposed policy places responsibility for both positive and negative actions on a single organizational level; i.e., the region. At the same time, we believe it continues to protect States by retaining a requirement for consultation at the national level to assure uniformity in such decisions.

3. *Partial approval of plans and amendments.* A new provision reflects the existing practice of approving certain parts of a new plan or plan amendment even though other parts are disapproved. We believe this procedure can expedite incorporation of approvable provisions into State plans and, in some cases, result in earlier availability of Federal funds.

4. *Decisions on plan amendments not treated as new plans.* The regulation clarify and modify procedures for approval of plan amendments not treated as new plans. A decision to approve or disapprove will be made within 90 days of receipt in the regional office as if the amendment were a new plan. In cases of disapproval, a new provision assures the State of the right to a reconsideration by the Director or his designee. The new reconsideration process for these amendments is simpler and can produce decisions more promptly.

5. *Establishing the submittal date of a plan or amendment.* A new section explains how to determine the submittal date of a proposed State plan or amendment. This is important to States for purposes of claiming Federal funds once the plan or amendment has been approved, and is not specified by existing regulations.

6. *Authority to allow or disallow a State claim for payment.* These amendments reflect redelegations of secretarial authority to permit the regional representative to allow and disallow State claims for Federal reimbursement. This arrangement and that in item 3 above give States a single focus for fiscal decisions. The

regional representative also continues to have the authority to defer payment decisions in certain situations.

7. *Reconsideration of disallowances.* These regulations incorporate by reference new procedures for reconsideration of disallowances of State claims for Federal reimbursement. The new procedures contained in 45 CFR Part 16, Subpart C, and published on March 6, 1978, give final decision authority to the Departmental Grant Appeals Board rather than to the program administrators as provided in existing regulations. The regulations would also allow 45 days, rather than the present 30, for a State to request reconsideration of a disallowance.

REQUEST FOR PUBLIC COMMENT

We invite comments on these regulations, particularly in the following areas:

1. Usefulness of having regulations for a specific program in a single chapter of the CFR, versus "joint" regulations governing the child support enforcement, medicaid, financial assistance, and social services program.

2. The usefulness of regulations versus other methods such as action transmittals for disseminating procedures on administering grants to States for the child support enforcement program.

3. Effectiveness of proposed revision of regulations affecting several programs whose rules have previously been intermingled. (See proposed rules from the Social Security Administration, the Health Care Financing Administration, and the Assistant Secretary for Human Development Services.)

The proposed regulations are to be issued under the authority of section 1102 of the Social Security Act; 45 Stat. 647; 42 U.S.C. 1302.

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program.)

Dated: July 20, 1978.

DON WORTMAN,
Acting Director, Office of
Child Support Enforcement.

Approved: August 19, 1978.

HALE CHAMPION,
Acting Secretary of Health,
Education, and Welfare.

It is proposed that chapter III of title 45 of the Code of Federal Regulations be amended by revoking part 301 and § 304.29 and § 304.40 of part 304 and republishing these provisions in a new part 300, to read as follows:

PART 300—GENERAL POLICIES AND PROCEDURES ON GRANTS TO STATES FOR THE CHILD SUPPORT ENFORCEMENT PROGRAM

Subpart A—Introduction

Sec.
300.0 Scope.
300.1 Definition.

Subpart B—State Plans and Plan Amendments

STATE PLANS AND PLAN AMENDMENTS IN GENERAL

300.100 What a State plan is.
300.101 When to amend a State plan.

SUBMISSION OF PROPOSED STATE PLANS AND PLAN AMENDMENTS

300.110 How to submit a proposed State plan or plan amendment.
300.111 How submittal date is determined.

APPROVAL AND DISAPPROVAL OF PROPOSED STATE PLANS AND PLAN AMENDMENTS

300.120 Who can approve or disapprove.
300.121 Partial or total approval.
300.122 What the decision deadline is.
300.123 Effective dates and FFP under an approved State plan or plan amendment.
300.124 How State is notified.

RECONSIDERATION OF DISAPPROVED STATE PLANS AND PLAN AMENDMENTS

300.130 What reconsideration procedures apply.
300.131 What happens to FFP pending outcome of reconsideration.
300.132 Prehearing procedures for reconsideration of disapproved new plan material.
300.133 Procedures for reconsideration of disapproved plan amendments not treated as a new plan.

Subpart C—Awards and Payments to States

AWARDS AND PAYMENTS IN GENERAL

300.200 When FFP can be claimed.
300.201 What the IV-D agency is responsible for.
300.202 Administration of grants.

SUBMISSION OF CLAIMS

300.210 How grant awards are issued and paid.
300.211 How estimates are made.
300.212 How expenditures are claimed.

ALLOWANCE AND DISALLOWANCE OF CLAIMS

300.220 Who can allow or disallow.
300.221 How a decision is made on a claim.
300.222 What happens when a claim is disallowed.
300.223 How to appeal disallowance of a claim.

DEFERRAL OF CLAIMS

300.230 What deferral is.
300.231 How deferral occurs.
300.232 How decision is made on a deferred claim.

INSTALLMENT REPAYMENT OF FEDERAL FUNDS

300.240 General.
300.241 How to set the repayment schedule.
300.242 How to determine the IV-D agency's share of expenditures.

Sec.
300.243 How to make repayment.

Subpart D—Reserved

Subpart E—Hearing Procedures for IV-D Agencies

GENERAL

300.400 Scope.
300.401 General rules.

ARRANGEMENTS FOR HEARING

300.405 How a IV-D agency is notified of a hearing.
300.406 Notice of hearing.
300.407 What the hearing issues are.
300.408 What the purpose of a hearing is.
300.409 Who presides.
300.410 How to be a party or amicus curiae to a hearing.

CONDUCT OF HEARING

300.415 Authority of presiding officer.
300.416 Discovery.
300.417 How evidence is handled.
300.418 What happens to unsponsored written materials.
300.419 What the record is.

AFTER THE HEARING

300.420 Posthearing briefs.
300.421 Decisions.
300.422 When decision becomes effective.

AUTHORITY: Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302; unless otherwise indicated.

Subpart A—Introduction

§ 300.0 Scope.

This part 300 contains rules on grants to States under title IV-D of the Social Security Act. This title authorizes Federal/State sharing of the costs of providing child support enforcement services to families eligible for the aid to families with dependent children program and to any other individuals applying for these services in the 50 States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, and the Northern Mariana Islands (90 Stat. 277). This part is divided into five subparts as follows:

(a) Subpart A contains a description of the child support enforcement program under part D of title IV of the Act. It includes general definitions related to this program.

(b) Subpart B describes State plans for the child support enforcement program. It tells when a plan must be amended and how a new State plan or plan amendment is submitted, processed, and appealed when it is disapproved.

(c) Subpart C contains rules for computing and authorizing payment of Federal grants. This includes rules on when State claims for Federal funds may be deferred or disallowed and how disallowances may be appealed.

(d) Subpart D describes the types of reviews conducted by Federal officials.

(e) Subpart E describes hearing procedures available to State agencies.

§ 300.1 Definitions.

As used in this part:

"Act" means the Social Security Act and titles referred to are titles of that Act.

"AFDC" means a program of aid to families with dependent children under part A of title IV.

"Approvable State plan or plan amendment" means a proposed plan or amendment which meets all applicable Federal requirements.

"Central office" means the central office of the Office of Child Support Enforcement.

"Department" or "HEW" means the Department of Health, Education, and Welfare.

"Director" and "Deputy Director" means the Director and Deputy Director, Office of Child Support Enforcement. The Director is the Secretary's designee to administer the child support enforcement program under part D of title IV.

"FFP" or "Federal financial participation" means the Federal Government's share of expenditures made by a State under the child support enforcement program.

"Federal PLS" means the Parent Locator Service operated by the Office of Child Support Enforcement pursuant to section 452(a)(9) of the Act.

"Federal requirements" means Federal statutes, regulations, and instructions.

"IV-D agency" means the single and separate organizational unit in the State that has the responsibility for administering or supervising the administration of the State's approved title IV-D State plan.

"IV-D program" means the State's child support enforcement program under title IV-D.

"Office" or "OCSE" means the Office of Child Support Enforcement, which is the separate organizational unit within the Department with the responsibility for administering the child support enforcement program under title IV-D.

"New State plan" means a plan which, if approved, would establish a federally aided program under part D of title IV of the Act where none existed before.

"Plan" or "State plan" means a comprehensive written commitment by a IV-D agency to administer, or supervise the administration of, title IV-D. This does not include a cost allocation plan as described in 45 CFR 302.16.

"Plan amendment" or "amendment" means an amendment to an approved State plan under title IV-D.

"Regional office" means one of the regional offices of OCSE.

"Regional representative" means a regional representative of OCSE.

"Secretary" means the Secretary of Health, Education, and Welfare.

"State" means a political jurisdiction which is eligible to submit a child support enforcement State plan to HEW for approval. It includes the District of Columbia, Guam, Puerto Rico, the Virgin Islands, and the Northern Mariana Islands.

"State PLS" means the service established by the IV-D agency pursuant to section 454(8) of the Act to locate absent parents.

Subpart B—State Plans and Plan Amendments

STATE PLANS AND PLAN AMENDMENTS IN GENERAL

§ 300.100 What a State plan is.

(a) A State plan is a detailed description of the nature and scope of a State's child support enforcement program. It commits a IV-D agency to administering the program in accordance with Federal requirements. Only proper program expenditures, which are made under an approved plan, are eligible for Federal financial participation. The IV-D agency must keep its approved plan current.

(b) OCSE will not consider materials submitted by a IV-D agency as State plan material unless they are submitted as part of a State plan or plan amendment and approved by the regional representative. The IV-D agency will also submit copies of current State operating manuals and other program materials to the regional representative, as requested.

§ 300.101 When to amend a State plan.

(a) A IV-D agency must amend its plan whenever:

(1) A new or amended Federal law or regulation requires a new provision or conflicts with an existing plan provision; or

(2) A U.S. Supreme Court decision changes the interpretation of a law or regulation; or

(3) State law, organization, policy, or IV-D agency operation undergoes a significant change.

(b) *When a provision is automatically nullified.* When a Federal statute or a U.S. Supreme Court decision invalidates or changes the interpretation of a plan provision, it also, on its effective date, automatically nullifies any conflicting provisions of an approved State plan. (See 45 CFR 302.13.)

SUBMISSION OF PROPOSED STATE PLANS AND PLAN AMENDMENTS

§ 300.110 How to Submit a proposed State plan or plan amendment.

(a) *General.* A IV-D agency must submit a proposed State plan or plan amendment to the regional representative, in accordance with OCSE instructions concerning format, content, time limits, transmittal forms, and procedures.

(b) *How plan amendments may be treated.* At the time of submittal, a IV-D agency may ask to have a proposed plan amendment treated as a new State plan.

(1) If such a request is made and the amendment is disapproved, the IV-D agency has a right to a hearing as described in § 300.132 and subpart E.

(2) If a proposed plan amendment is not treated as a new State plan and the amendment is disapproved, the IV-D agency may request a reconsideration as described in § 300.133.

(c) *Review by Governor.* When submitting a proposed State plan or plan amendment to the regional representative, the IV-D agency shall specify that the Governor or the Governor's designee:

(1) Was given 45 days to review the material and that resulting comments, if any, are included in the submittal; or

(2) Did not wish to review the material.

§ 300.111 How submittal date is determined.

(a) *General.* The submittal date of a proposed State plan or plan amendment is the date it is mailed to the regional office, as established by the IV-D agency (for example, in the form of a postmark, registered mail date, or affidavit of mailing). If the material is delivered by hand, the submittal date is that shown by the regional office date stamp.

(b) *When submittal date changes.* If a proposed State plan or plan amendment is not approvable because it does not meet a Federal requirement, the date on which the required change is mailed or delivered to the regional office becomes the submittal date.

(c) *When submittal date remains unchanged.* If a proposed State plan or plan amendment is approvable but requires clearer wording, that clarifying revision retains the date of the original submittal.

APPROVAL AND DISAPPROVAL OF PROPOSED STATE PLANS AND PLAN AMENDMENTS

§ 300.120 Who can approve or disapprove.

The regional representative has the authority to approve or disapprove a proposed State plan or plan amendment. Before disapproving, the regional representative consults with the Deputy Director.

§ 300.121 Partial or total approval.

(a) *State plan.* OCSE approves a proposed State plan only if it meets all Federal requirements. If any required provision is unapprovable or is omitted, OCSE will disapprove the entire plan. However, OCSE may disapprove sections of a proposed State plan

which relate to optional Federal provisions without affecting approval of the rest of the plan.

(b) *Plan amendment.* OCSE need not approve or disapprove a proposed plan amendment in its entirety, regardless of whether the IV-D agency asks to have it treated as a new State plan. OCSE can approve amendments to specific parts of a State plan and disapprove amendments to other parts.

§ 300.122 What the decision deadline is.

(a) *General.* The regional representative has 90 days from receipt of a IV-D agency's submittal to issue a decision approving or disapproving a proposed State plan or plan amendment.

(b) *Extension.* The IV-D agency and the regional representative may agree in writing to an extension of the 90-day period.

§ 300.123 Effective dates and FFP under an approved State plan or plan amendment.

(a) *When a plan or amendment affecting FFP becomes effective.* An approved State plan or plan amendment which affects FFP becomes effective on the later of the following dates:

(1) The first day of the calendar quarter in which an approvable plan or amendment was submitted (see § 300.111 for submittal date); or

(2) The first date on which the plan or plan amendment becomes effective in the State.

(b) *When an amendment not affecting FFP becomes effective.* When an amendment does not affect FFP, it becomes effective on the date set by the IV-D agency.

(c) *When claim for FFP can be submitted.* A IV-D agency may not submit claims for new or additional expenditures made under a plan or amendment until that plan or amendment has been approved.

§ 300.124 How State is notified.

(a) *Approval.* When the regional representative approves a proposed State plan or plan amendment, he or she notifies the IV-D agency in writing.

(b) *Disapproval.* When the regional representative, after consulting with the Deputy Director, disapproves part or all of a proposed State plan or plan amendment, he or she notifies the IV-D agency in writing. This notice gives the reason for disapproval and informs the IV-D agency that it has 60 days to request the Director to reconsider the decision (see § 300.130).

RECONSIDERATION OF DISAPPROVED STATE PLANS AND PLAN AMENDMENTS

§ 300.130 What reconsideration procedures apply.

(a) *For new State plans and plan amendments treated as new plans.* A IV-D agency may request reconsideration of disapproval of a State plan or plan amendment which is treated as a new State plan under section 300.132. For purposes of this subpart, the term "new plan material" includes both categories.

(b) *For plan amendments not treated as new plans.* A IV-D agency also may request reconsideration of a disapproved plan amendment which is not treated as a new plan under § 300.133.

§ 300.131 What happens to FFP pending outcome of reconsideration.

When a IV-D agency requests reconsideration of a disapproval of a proposed State plan or plan amendment, FFP in any new or increased expenditures under the disapproved plan or amendment is not available until a final decision is made. If the decision is favorable to the IV-D agency, the Director will certify lump/sum payment of any amount due.

§ 300.132 Prehearing procedures for reconsideration of disapproved new plan material.

(a) *How to request.* A IV-D agency has 60 days from receipt of OCSE's written notice of disapproval of new plan material to request a reconsideration. The IV-D agency shall make the request in writing to the Director, with a copy to the regional representative.

(b) *Acknowledgment of request.* Within 30 days of receiving the reconsideration request, the Director notifies the IV-D agency in writing of the date, time, and place of a hearing and of the issues to be considered. (See subpart E for hearing procedures.)

§ 300.133 Procedures for reconsideration of disapproved plan amendments not treated as a new plan.

(a) *How to request.* A IV-D agency has 60 days from receipt of OCSE's written notice of disapproval to request reconsideration of a plan amendment not treated as a new plan. The IV-D agency shall make the request in writing to the Director, with a copy to the regional representative.

(b) *Acknowledgment of request.* The Director acknowledges a IV-D agency's request for reconsideration promptly and in writing.

(c) *Submittal of information.* (1) OCSE will promptly send the IV-D agency a list of all material that is part of the record. OCSE will also make this material available for the IV-D agency's inspection and copying.

(2) The regional representative and the IV-D agency have 30 days from the date of the OCSE list to submit any additional supporting material to the Director and to each other. If the regional representative or the IV-D agency submits additional material, the other party has 20 days from the transmittal date to respond in writing to the Director.

(d) *Right to conference.* (1) At any time during the periods allowed under paragraph (c) of this section, the IV-D agency may request a conference with the Director or his designee to discuss the issues.

(2) The IV-D agency may have the conference transcribed at its own expense. Upon its request, the transcript becomes part of the record.

(e) *What the record is.* All materials considered in reaching a decision constitute the record of a reconsideration. The record closes on the later of the following dates:

(1) Expiration of the periods allowed under paragraph (c) of this section; or

(2) If there is a conference and the transcript becomes part of the record, upon the Director's receipt of the transcript; or

(3) If there is a conference and the transcript does not become part of the record, 30 days after the conference.

(f) *How the decision is issued.* Within 90 days after the record is closed, the Director or the person designated to preside at the conference will issue a written decision. He or she will send that decision to the head of the IV-D agency.

(g) *Extension of time limits.* Either the IV-D agency or the regional representative may, for good cause, request an extension of the time limits in this section.

Subpart C—Awards and Payments to States Awards and Payments in General

§ 300.200 When FFP can be claimed.

A IV-D agency may claim Federal funds for a share of the cost of child support enforcement services and related administrative expenditures made under an approved State plan and other Federal requirements, including prior approval of certain classes of expenditures as required and in conformity with an approved cost allocation plan. In submitting a claim, expenditures under plan provisions pending approval must be separate from those plan provision already approved. (See § 300.123 for the effective date of a new plan or amendment.)

§ 300.201 What the IV-D agency is responsible for.

The IV-D agency is responsible for submitting (or, at the option of OCSE, making available) all documentation required by OCSE in the format speci-

fied to establish the allowability of its claim for FFP. (See §§ 300.230-300.232 on deferrals and § 300.222 on disallowances.)

§ 300.202 Administration of grants.

(a) *General.* Unless otherwise indicated, all grants made to States under this part are subject to the provisions of part 74 of this title, Administration of Grants.

(b) *Exception—Subparts G, Matching and Cost Sharing, and I, Financial Reporting Requirements,* of part 74 of this title do not apply to these grants.

SUBMISSION OF CLAIMS

§ 300.210 How grant awards are issued and paid.

(a) *Amount of grant.* Subject to the availability of Federal funds, the Director or his Deputy issues a grant award for each quarter. The grant award is based upon the regional representative's estimate for that quarter, reduced or increased to the extent that the estimate for any prior quarter was greater or less than the amount which should have been paid for that quarter. Examples of adjustments which reduce or increase a grant award include:

(1) The difference between the estimate and the amount claimed by the State;

(2) Amounts (including penalties and audit exceptions) which the regional representative disallows;

(3) Amounts which the regional representative defers;

(4) Amounts which the regional representative has deferred and later finds allowable;

(5) Amounts of recoveries, refunds, and collections as determined by the regional representative; and

(6) Amounts which exceed statutory limitations on funds.

(b) *How State is notified.* The Director or his Deputy issues to the IV-D agency a grant award showing the amounts awarded for each quarter. Accompanying the grant award is a form showing basis on which the grant was computed. The Director or this Deputy also notifies the State Central Information Reception Agency of the grant award, in accordance with section 201 of the Intergovernmental Cooperation Act of 1968.

(c) *How the grant is paid.* The Departmental Federal Assistance Financing System (DFAFS) pays the grant. Subpart K of 45 CFR Part 74, Treasury Circular No. 1075, and the DFAFS Recipient Users Manual govern payment procedures.

§ 300.211 How estimates are made.

(a) At least 45 days before the beginning of the estimate quarter the IV-D agency shall submit to the Deputy Di-

rector (with a copy to the appropriate regional representative):

(1) Estimates of the total amount, and the Federal share of expenditures, for the IV-D program; and

(2) A certification of the amount of State funds (and local funds, if applicable) appropriated or made available for the estimated expenditures, signed by:

(i) A fiscal officer of the State, if required by State law or regulations; or

(ii) The IV-D agency's executive officer or a person that officer has officially designated.

(3) If the funds certified as appropriated or made available are insufficient to cover the State's share of the estimated expenditures, the IV-D agency must indicate in the certification the source from which the balance of funds will be obtained and when.

§ 300.212 How expenditures are claimed.

(a) *What the quarterly statement of expenditures is.* The quarterly statement of expenditures is an accounting by the IV-D agency for expenditures made during a quarter under its IV-D program and the IV-D agency's claim for Federal reimbursement.

(b) *How to submit the statement.* Within 30 days after the end of each calendar quarter, the IV-D agency shall submit to the Deputy Director, with a copy to the regional representative, a quarterly statement of expenditures for that quarter, along with the necessary supporting schedules.

(c) *Rejection of statement.* If the quarterly statement of expenditures is based on estimates, it will be rejected. Indirect costs calculated in conformance with approved cost allocation plans are acceptable.

ALLOWANCE AND DISALLOWANCE OF CLAIMS

§ 300.220 Who can allow or disallow.

(a) *General.* The regional representative has the authority to allow or disallow a claim, paid or unpaid, for FFP.

(b) *Exception.* The Director and Deputy Director retain authority to allow FFP in expenditures which have been questioned by the General Accounting Office or the HEW Audit Agency.

§ 300.221 How a decision is made on a claim.

The regional representative allows or disallows a State's claim for FFP based on review and analysis of the quarterly statement of expenditures. In determining whether expenditures are allowable, either regional or central office officials may conduct onsite reviews involving examination of IV-D agency accounting and operational records and discussions with State officials.

§ 300.222 What happens when a claim is disallowed.

(a) *General.* A disallowance is a finding by the regional representative that a IV-D agency's claim for FFP is not properly chargeable to the program. Because of statutory penalties and limitations, the regional representative may also disallow expenditures which are properly chargeable to the program.

(b) *How IV-D agency is notified.* If any portion of the amount claimed on a quarterly statement of expenditures is disallowed, the regional representative's notice to the IV-D agency includes pertinent information on the amounts, dates and reasons for the disallowance. The notice also indicates that the IV-D agency may request reconsideration of the disallowance as described in section 300.223.

§ 300.223 How to appeal disallowance of a claim.

(a) *How to request.* A IV-D agency has 45 days from the postmark date of OCSE's disallowance notice to request reconsideration under 45 CFR Part 16. The request shall be addressed to the Executive Secretary, Departmental Grant Appeals Board, with copies to the Director and the regional representative.

(b) *What happens to a claim pending reconsideration decision.*

(1) If reconsideration is requested on the disallowance of an amount already awarded to a State, no action will be taken to recover the Federal funds pending the reconsideration decision.

(2) If reconsideration is requested on the disallowance of an amount not already awarded to a State, that amount will not be awarded pending the reconsideration decision.

(c) *Director's review before reconsideration.* A IV-D agency may, as specified by OCSE, request the Director to review a disallowance before seeking reconsideration by the Grant Appeals Board. The Director may decline. The IV-D agency may also withdraw its review request at any time. If the Director reviews a disallowance, his or her decision is OCSE's final action on the matter, and time devoted to that review does not count toward the 45-day period for requesting reconsideration under paragraph (a) of this section.

DEFERRAL OF CLAIMS

§ 300.230 What deferral is.

As used in this subpart, "deferral" refers to the suspension of the decision on the allowability of a claim for FFP, pending the inspection and analysis of further information.

§ 300.231 How deferral works.

(a) *Basis for deferral.* The regional representative can defer the inclusion of a claim in the computation of a grant award (see § 300.210) if it is of questionable allowability.

(b) *Notice to IV-D agency.* The regional representative takes deferral action within 60 days after receiving an acceptable quarterly statement of expenditures. Within 15 days of the deferral action, the regional representative sends the IV-D agency written notification identifying the type and amount of claim and the reason for deferral. The notice will also request the IV-D agency to make available for inspection all material which the regional representative considers necessary to determine the allowability of the claim.

(c) *How IV-D agency responds.* Within 60 days of the date of the Regional Representative's notice of deferral, the IV-D agency shall make any requested materials available to the regional office in readily reviewable form. If the IV-D agency requires additional time to make materials available, the regional representative, upon request, will give the agency an additional period of no more than 60 days.

§ 300.232 How decision is made on a deferred claim.

(a) *Review of IV-D agency material.* The regional representative will review all materials furnished under § 300.231 and, within 30 days of their receipt, notify the IV-D agency if they are not readily reviewable or need supporting information. The IV-D agency has 15 days from the date of this notification to make available revised or additional materials. If the IV-D agency does not make the required materials available, the regional representative will promptly disallow the claim (see § 300.222(b)).

(b) *How action is taken on deferred claim.* After the IV-D agency has made all required materials available in acceptable form, the regional representative will allow or disallow a deferred claim and notify the IV-D agency in writing of the decision. If the regional representative does not notify the IV-D agency within 90 days after all required materials have been made available, the Deputy Director will include the claim in the computation of a grant award, subject to a possible later disallowance.

INSTALLMENT REPAYMENT OF FEDERAL FUNDS

§ 300.240 General.

(a) *When Federal funds must be repaid.* When a claim has been reimbursed and is later determined to be

unallowable, the State must repay the unallowable amount.

(b) *When the IV-D agency may repay in installments.* A IV-D agency may repay in installments if:

(1) The total amount to be repaid exceeds 2½ percent of the IV-D agency's share of annual expenditures; and

(2) Before repayment is otherwise due, the IV-D agency notifies the regional representative in writing of its intention to repay in installments.

(c) *Exclusion of other installment repayments.* For purposes of § 300.240-§ 300.243, the amount of a repayment does not include any amount previously approved for installment repayment.

§ 300.241 How to set the repayment schedule.

(a) *How many quarters the repayment may cover.* In order to determine the number of quarters over which repayment may be spread, the State computes this repayment as a percentage of the IV-D agency's share of annual expenditures. Using that percentage, the maximum number of calendar quarters over which a State can spread repayment is:

NUMBER OF QUARTERS TO MAKE REPAYMENT

Total repayment amount as percentage of IV-D agency's share of annual expenditures	No.
2.5 or less	1
Greater than 2.5, but not greater than 5	2
Greater than 5, but not greater than 7.5	3
Greater than 7.5, but not greater than 10	4
Greater than 10, but not greater than 15	5
Greater than 15, but not greater than 20	6
Greater than 20, but not greater than 25	7
Greater than 25, but not greater than 30	8
Greater than 30, but not greater than 47.5	9
Greater than 47.5, but not greater than 65	10
Greater than 65, but not greater than 82.5	11
Greater than 82.5, but not greater than 100	12
Greater than 100	13+

(b) *How much must be repaid in an installment.*

(1) Except for the final repayment, the amount due for each quarter in a repayment schedule shall not be less than the following percentages of the IV-D agency's share of annual expenditures:

REPAYMENT AMOUNT MAY NOT BE LESS THAN THESE PERCENTAGES

For each of the following quarters:

1 to 4	2.5
5 to 8	5.0
9 plus	17.5

(2) If the State pays higher percentages during the early quarters of its repayment schedule, it applies any corresponding reduction in the minimum percentages first to the last repayment scheduled, then to the next to last, and so on.

§ 300.242 How to determine a IV-D agency's share of expenditures

(a) *General.* A IV-D agency's share of annual expenditures is based on the agency's most recent quarterly statement of financial plan. The IV-D agency's share is the sum of its shares for four quarters, beginning with the quarter in which the first repayment is due.

§ 300.243 How to make repayment.

(a) *General.* OCSE will deduct the appropriate repayment amount from each quarterly grant in accordance with the repayment schedule.

(b) *Retroactive claims.* If OCSE has allowed a State's retroactive claim for FFP, OCSE will offset the amount of that claim against any amounts to be repaid by the State in installments. (For purposes of this section, a retroactive claim is one applicable to any period ending 12 months or more prior to the beginning of the quarter in which Federal funds are to be paid.) Under this provision, a State may:

(1) Suspend repayments until the retroactive claim has been offset; or

(2) Continue repayments until the reduced amount of its debt (remaining after the offset) has been paid in full.

(c) *When interest is charged on repayments.* OCSE will not charge interest on repayments unless required by court order.

Subpart E—Hearing Procedures for IV-D Agencies

GENERAL

§ 300.400 Scope.

(a) Hearing procedures described in this subpart apply to reconsideration of a disapproved proposed State plan or plan amendment which is treated as a new plan.

(b) Nothing in this subpart limits negotiations between the Department and the State.

§ 300.401 General rules.

(a) *How to get records.* All papers filed in connection with a hearing are available for inspection and copying in the office of the OCSE hearing clerk. Individuals should direct inquiries to the Central Information Center, Department of Health, Education, and Welfare, 200 Independence Avenue SW., Washington, D.C. 20201.

(b) *How to file and serve papers.* (1) Anyone who wishes to submit papers for the docket shall file with the OCSE hearing clerk an original and

two copies, but only originals of exhibits and testimony transcripts.

(2) Anyone who wishes papers to be part of the record shall also serve copies on all parties by personal delivery or by mail. Service on a party's designated attorney is the same as service on the party.

(c) *How rules are suspended.* The Director or the presiding officer may, after notifying all parties, modify or waive any rule in § 300.401-300.421 if he or she decides the action is equitable and will not unduly prejudice the rights of any party.

ARRANGEMENTS FOR HEARING

§ 300.405 How to request hearing

A IV-D agency has 60 days from receipt of written notice of State plan disapproval to request a formal hearing. The IV-D agency makes its request in writing to the Director, with a copy to the regional representative.

§ 300.406 How request is acknowledged.

(a) *Notice of hearing.* Within 30 days of receiving a hearing request, the Director will notify the IV-D agency in writing of the date, time, and place of the hearing and of the issues to be considered. The Director will also publish the hearing notice in the *FEDERAL REGISTER*.

(b) *When the hearing must be set.* The date set for a hearing will be at least 20, but not more than 60 days from the date the IV-D agency receives the hearing notice. However, the IV-D agency and the Director may agree in writing to a different date.

§ 300.407 What the hearing issues are.

(a) *General.* The issues at a hearing are those included in the notice to the IV-D agency described in § 300.406.

(b) *How the Director may add issues.* At least 20 days before a scheduled hearing, the Director will notify the IV-D agency in writing of any additional issues to be considered. The Director will also publish this notice in the *FEDERAL REGISTER*. If the IV-D agency does not receive its notice in the required time, any party may request the Director to postpone the hearing. If a request is made, the Director will set a new hearing date which is at least 20, but not more than 60 days, from the date the State agency receives the hearing notice.

(c) *How actions by the State may cause the Director to add, modify, or remove issues.* The Director may add, modify or remove issues if, for example, the State agency:

(1) Changes its practices to comply with Federal requirements and its State plan; or

(2) Conforms its State plan to Federal requirements and pertinent court decisions.

(d) *What happens when State action causes the Director to add, modify, or remove issues.*

(1) If the Director specifies new or modified issues, the hearing will proceed on these issues.

(2) (i) If the Director removes an issue, the hearing will proceed on the remaining issues. If the Director removes all the issues, he or she will terminate the hearing proceedings. The Director may terminate hearing proceedings or remove issues before, during, or after the hearing.

(ii) Before removing any issue, the Director will notify all parties other than the Department and the State. This notice will contain the reasons for removing the issue. Within 20 days of the date of this notice, the parties may submit comments in writing on the merits of the proposed removal. The Director will consider these comments and they will become a part of the record.

§ 300.408 What the purpose of a hearing is.

A hearing is held to receive factual evidence and testimony, including expert opinion testimony related to the issues. The presiding officer will not allow arguments as evidence. However, he or she may allow arguments in statements, memoranda, or briefs.

§ 300.409 Who presides.

The presiding officer at a hearing is the Director or a person he or she appoints. If the Director appoints a presiding officer, the Director will send copies of the appointment notice to all parties.

§ 300.410 How to be a party or amicus curiae to a hearing.

(a) *HEW and IV-D agency.* HEW and the IV-D agency are parties to a hearing without having to request participation.

(b) *Other parties or amici curiae.* Any individual or group wishing to be a party or amicus curiae to a hearing must file a petition with the OCSE hearing clerk no more than 15 days following publication of the hearing notice in the *FEDERAL REGISTER*. A petitioner who wishes to be a party must also provide a copy of the petition to each party of record at that time.

(c) *What must be in a petition.* The petition must state concisely:

(1) The petitioner's interest in the proceedings;

(2) Who will appear for the petitioner;

(3) The issue on which the petitioner wishes to participate; and

(4) Whether the petitioner intends to present witnesses, if the petitioner wishes to be a party.

(d) *What happens to a petition.* The presiding officer will determine

promptly whether each petitioner has the necessary interest in the proceedings, and permit or deny the petition accordingly and in writing. Before making this determination, the presiding officer will allow any party to file comments on the petition to be a party. Any party who wishes to file comments must do so within 5 days of receiving the petition. If the presiding officer denies the petition, he or she will state the reason.

(2) The presiding officer may decide that individuals or groups who have become parties on petition have common interests. He or she may then request that they designate a single representative, or may recognize two or more of those parties to represent all of them.

(e) *What rights parties have.* Any party may:

(1) Appear by counsel or other authorized representative in all hearing proceedings;

(2) Participate in any prehearing conference held by the presiding officer;

(3) Stipulate facts which, if not contested by other parties, will become part of the record;

(4) Make opening statements;

(5) Present relevant evidence;

(6) Present witnesses who must be available for cross-examination by all other parties;

(7) Present oral arguments at the hearing; and

(8) After the hearing submit written briefs, proposed findings of fact, and proposed conclusions of law.

(f) *What rights amici curiae have.* Any amicus curiae may:

(1) Present an oral statement at the hearing at the point in the proceedings specified by the presiding officer;

(2) Submit a written statement of position to the presiding officer before the hearing begins; and

(3) Submit a brief or written statement at the same time as the parties submit briefs. If an amicus curiae submits a written statement or brief, he or she shall serve a copy on each party.

CONDUCT OF HEARING

§ 300.415 Authority of presiding officer.

(a) *General.* It is the duty of the presiding officer to conduct a fair hearing, avoid delay, maintain order, and make a record of the proceedings. He or she has authority to carry out these duties. This includes the authority to:

(1) Regulate the course of the hearing;

(2) Regulate the participation and conduct of the parties, amici curiae and others at the hearing;

(3) Rule on procedural matters and, if necessary, issue protective orders or other relief to a party against whom discovery is sought;

(4) Take any action authorized by the rules in this Subpart or in conformance with 5 U.S.C. 551-559;

(5) Make a final decision if the Director is the presiding officer;

(6) Administer oaths and affirmations;

(7) Examine witnesses; and

(8) Receive or exclude evidence or rule on or limit evidence or discovery.

(b) *What the presiding officer cannot do.* The presiding officer does not have the authority to compel by subpoena the production of witnesses, papers, or other evidence.

(c) *When the presiding officer's authority is limited.* If the presiding officer is not the Director, he or she does not have the authority to make the final decision, but shall certify the entire record to the Director, including recommended findings and proposed decisions.

§ 300.416 Discovery.

Any party has the right to conduct discovery against other parties. These discovery proceedings are subject to rules 26-37, Federal Rules of Civil Procedure. The presiding officer shall promptly rule on any written objection to discovery and may restrict or control discovery so as to prevent undue delay in the hearing. If any party fails to respond to discovery procedures, the presiding officer may issue any order and impose any sanction (other than contempt orders) authorized by rule 37 of the Federal Rules of Civil Procedure.

§ 300.417 How evidence is handled.

(a) *Testimony.* Witnesses, under oath or affirmation, give oral testimony at a hearing. All witnesses must be available at the hearing for cross-examination by all parties.

(b) *Rules of evidence.* Technical rules of evidence do not apply to hearings described in this subpart. The presiding officer applies whatever rules or principles are necessary to assure disclosure of the most credible evidence available and to subject testimony to cross-examination. Cross-examination may be on any material regardless of the scope of direct examination.

§ 300.418 What happens to unsponsored written materials.

Letters and other written material regarding matters at issue, when not submitted specifically on behalf of one of the parties, will become part of the correspondence section of the docket. This material is not part of the evidence or the record.

§ 300.419 What the record is.

(a) *Official transcript.* HEW designates the official reporter for a hearing. The OCSE hearing clerk has the

official transcript of testimony, as well as any other materials submitted with the official transcript. The parties and the public may obtain transcripts of testimony from the official reporter at rates which do not exceed the maximum fixed by contract between the official reporter and HEW. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.

(b) *Record.* The record for the hearing decision consists of the transcript of testimony, exhibits, and all papers and requests filed in the proceedings except for the correspondence section of the docket. The record includes any rulings and any decisions on the issues.

AFTER THE HEARING

§ 300.420 Posthearing briefs.

The presiding officer shall fix the time for filing posthearing briefs. These may contain proposed findings of fact and conclusions of law. The presiding officer may permit filing of reply briefs.

300.421 Decisions.

(a) *When the Director is presiding officer.* If the Director is the presiding officer, he or she will issue a final decision within 60 days after expiration of the time allowed for filing of posthearing or reply briefs.

(b) *When the Director appoints a presiding officer.*

(1) The presiding officer, after the time for filing posthearing or reply briefs has expired, shall certify the entire record, including his or her recommended findings and proposed decision, to the Director.

(2) The Director will provide a copy of the recommended findings and proposed decision to all parties and any amici curiae. Within 20 days, a party may file with the Director exceptions to the recommended findings and proposed decision. The party must file a supporting brief or statement with the exceptions.

(3) The Director will review the presiding officer's recommended findings and proposed decision and, within 60 days of receiving them, issue a final decision. The Director will provide copies of that decision to all parties and any amici curiae.

§ 300.422 When decision becomes effective.

If the Director decides to uphold the disapproval of a proposed State plan or plan amendment treated as a new plan, any claims already paid under the disapproved material may later be disallowed. (See § 300.123 for effective date and availability of FFP when the

Director approves a plan or amendment which has been at issue.)

[FR Doc. 78-23942 Filed 8-24-78; 8:45 am]

[4110-35]

Health Care Financing Administration

[42 CFR Parts 201, 204, 205, 213, 430]

GENERAL POLICIES AND PROCEDURES ON GRANTS FOR MEDICAL ASSISTANCE

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Proposed rule.

SUMMARY: These proposed regulations would reorganize and clarify existing procedural rules on administration of grants to medicaid State agencies. They cover submittal and approval of State plans and plan amendments, Federal payment of State claims, Federal reviews and audits of State medicaid programs, and State agency appeals of Federal decisions on these plans, payments, reviews, and audits. These regulations include new procedures for approval and disapproval of plans and amendments, new provisions for immediate recovery of funds upon disallowance, new procedures for reconsideration of disallowed State claims, changes in time periods for deferrals of claims payment, and changes in routing of payment for survey and certification of long term care facilities. Comparable regulations, appearing today in part V are proposed for the child support enforcement, social services, and financial assistance programs. Existing regulations which are modified and incorporated into these proposed rules are in 45 CFR Parts 201, 204, 213, and portions of 205.

DATES: Closing date for receipt of comments: October 24, 1978.

ADDRESSES: Address comments in writing to: Administrator, Health Care Financing Administration, Department of Health, Education, and Welfare, P.O. Box 2366, Washington, D.C. 20013. Please refer to file code MMB-206. Agencies and organizations are requested to submit comments in duplicate. Beginning 2 weeks from today, the public may review the comments Monday through Friday of each week, from 8:30 a.m. to 5 p.m.: Health Care Financing Administration, Room 5231, 330 C Street SW., Washington, D.C. 20201, 202-245-0950.

FOR FURTHER INFORMATION CONTACT:

Eileen Brooks, 202-245-0722.

SUPPLEMENTARY INFORMATION:

GENERAL PROGRAM DESCRIPTION

The Social Security Act, title XIX, provides formulas for Federal/State sharing in the costs of the medicaid program. Each State and territory is entitled to a Federal grant award for this program when it is operated under a State plan approved by HEW. The agency within HEW which is responsible for Federal administration of medicaid is the Health Care Financing Administration (HCFA). These proposed regulations cover the policies and procedures for HCFA approval and disapproval of State plans, for allowance and disallowance of State claims for payment, for Federal reviews and audits of State medicaid programs, and for State agency appeals of Federal decisions in these areas.

REASONS FOR REVISING REGULATIONS

Under the HEW reorganization order of March 8, 1977, the Social and Rehabilitation Service was disbanded and Federal responsibility for medicaid was transferred to HCFA.

On September 12, 1977, the Secretary of HEW announced two major efforts at improving the departmental regulations. The first, "Operation Common Sense," is a 5-year effort to review and revise existing regulations to make them clearer and more useful. The second effort changed departmental procedures for developing new regulations.

The Department's reorganization coupled with the Secretary's directives on improving HEW regulations prompted this proposed rule. It reflects HEW organizational changes, combines procedures now spread through several parts in title 45 of the CFR into a single part 430 in title 42, that applies only to the medicaid program, and uses clearer, simpler language. Additional content and format changes are outlined below.

PROPOSED REGULATION FORMAT

Under this proposal, procedures for administering grants for medical assistance programs are in a single part 430 in title 42 of the CFR where all other medicaid regulations are or will be located. Regulations on procedures for administering grants to States for financial assistance, social services, and child support enforcement are also proposed in similar formats, each in a single part in the appropriate CFR title and chapter. (See part V of this issue.)

PROPOSED CONTENT CHANGES

1. *Definitions.* The definitions section has been expanded to cover more terms commonly used throughout this and other parts of 42 CFR Chapter IV, Subchapter C.

2. *Authority to approve or disapprove a State plan or amendment.* Secretarial authority is redelegated to the Regional Medicaid Director for approval of State plans and plan amendments, and to the Bureau Director for their disapproval. Under prior delegations, the Regional Medicaid Director could approve but disapproval was reserved to the Administrator of the Health Care Financing Administration after consultation with the Secretary. The proposed policy places responsibility for approvals at the level where the plan enters the approval process, but protects the States in cases of disapproval by requiring that a regional office recommendation be reviewed and decided upon at the central office to assure uniformity and objectivity in these decisions.

3. *Partial approval of plans and amendments.* A new provision permits approval of certain parts of a new plan or plan amendment even though other parts are disapproved. We felt this would expedite incorporation of approvable provisions into State plans and, in some cases, result in earlier availability of Federal funds.

4. *Decisions on plan amendments not treated as new plan material.* Procedures for approval of plan amendments not treated as a new plan are clarified and modified in these regulations. A decision to approve or disapprove will be made within 90 days of receipt in the regional office, just as if the amendment were treated as a new plan. In cases of disapproval, a new provision assures the State of the right to a reconsideration by the Administrator, HCFA. There is now no specific regulatory provision for appeals on disapproved plan amendments of this type although the procedure applicable to disallowances (45 CFR 201.14) has been used. The new reconsideration process for these amendments is simpler and can produce decisions more promptly.

5. *Establishing the submittal date of a plan or amendment.* A new section has been added explaining how the submittal date is officially determined. This is important to States for purposes of claiming Federal funds once the plan or amendment has been approved. Existing regulations are silent on this.

6. *Authority to allow or disallow a State claim for payment.* These amendments reflect redelegations of Secretarial authority to permit both allowance and disallowance decisions to be made by the Administrator. This gives States a single focus for fiscal decisions. The Regional Medicaid Director has the authority to defer payment decisions on claims of questionable allowability, and to review related materials from the State agency, prior to making a recommendation on the

allowability of the claim to the Administrator.

7. *Immediate recovery of disallowed State claims for payment.* A new section has been added to these regulations providing for the immediate recovery of funds upon disallowance. Under existing regulations, if a State agency has been reimbursed for expenditures that are later disallowed, the disallowed funds are not recovered until after a reconsideration decision has been made. This new procedure is being added to the regulations so that the large sums which are often involved in these cases will be available to HEW during the reconsideration period.

8. *Reconsideration of disallowances.* These regulations incorporate by reference new procedures for reconsideration of disallowances of State claims for Federal reimbursement. The new procedures at 45 CFR Part 16, Subpart C, published March 6, 1978, give reconsideration authority to the Departmental Grant Appeals Board, rather than to the program Administrator as previously provided.

9. *Time periods for claim deferrals.* Two 30-day periods have been added to the claim deferral procedures. The first allows State agencies time to submit additional documentation after the Administrator's notice of findings on the allowability of the deferred claim. The second allows the Administrator time to consider the additional material before issuing a final decision.

10. *Reimbursement for survey and certification of long term care facilities.* Reimbursement to State agencies responsible for long term care facility surveys and certifications will no longer flow through Medicaid State agencies. HCFA will reimburse the responsible State agencies directly for these surveys and certifications.

11. *Formal hearing procedures.* Section 1116 of the Act requires that States be given an opportunity for formal hearings on disapprovals of new plans and on compliance and conformity actions. The formal procedures are now at 45 CFR part 213. They are being incorporated into these regulations, so that the regulations cover the full sequence of processing events.

REQUEST FOR PUBLIC COMMENT

We invite comments on these regulations, particularly in the following areas:

1. Usefulness of having regulations for a specific program in a single chapter of the CFR versus joint regulations governing the Medicaid, financial assistance, social services, and child support enforcement programs.

2. The usefulness of regulations versus other methods, such as action transmittals, for disseminating proce-

dures on administering grants to States for medical assistance programs.

3. Effectiveness of the current revision of regulations affecting several programs whose rules have previously been intermingled. (See proposed rules beginning on page from the Social Security Administration, the Office of Child Support Enforcement, and the Office of Human Development Services.)

42 CFR chapter IV, subchapter C, is amended by adding a new part 430 to read as set forth below:

PART 430—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

Subpart A—Introduction

- Sec.
430.0 Scope.
430.1 Definitions.

Subpart B—State Plans and Amendments

STATE PLANS AND AMENDMENTS IN GENERAL

- 430.100 What a State plan is.
430.101 When to amend a State plan.

SUBMISSION OF STATE PLANS AND PLAN AMENDMENTS

- 430.110 How to submit a proposed State plan or plan amendment.
430.111 How submittal date is determined.

APPROVAL AND DISAPPROVAL OF PROPOSED STATE PLANS AND PLAN AMENDMENTS

- 430.120 Who can approve or disapprove.
430.121 Partial or total approval.
430.122 What the decision deadline is.
430.123 Effective dates and FFP under an approved State plan or plan amendment.
430.124 How State is notified.

RECONSIDERATION OF PLAN MATERIAL DISAPPROVALS

- 430.130 What reconsideration procedures apply.
430.131 What happens to FFP pending outcome of reconsideration.
430.132 Prehearing procedures for reconsideration of new plan material.
430.133 Procedures for reconsideration of a disapproved plan amendment not treated as a new plan.

Subpart C—Awards and Payments to States

AWARDS AND PAYMENTS IN GENERAL

- 430.200 When FFP may be claimed.
430.201 What the State agency is responsible for.
430.202 Administration of grants.

SUBMISSION OF CLAIMS

- 430.210 How grant awards are issued.
430.211 How estimates are made.
430.212 How expenditures are claimed.
430.213 How a grant award is computed.

ALLOWANCE AND DISALLOWANCE OF CLAIMS

- 430.220 Who can allow or disallow.
430.221 How a decision is made on a claim.
430.222 What happens when a claim is disallowed.
430.223 How to appeal disallowance of a claim.

DEFERRAL OF CLAIMS PAYMENT

- 430.230 What deferral is.
430.231 How deferral occurs.
430.232 How decision is made on a deferred claim.

INSTALLMENT REPAYMENT OF FEDERAL FUNDS

- 430.240 General.
430.241 How to set the repayment schedule.
430.242 How to determine the State agency's share of expenditures.
430.243 How to make repayment.

Subpart D—Federal Program and Financial Reviews and Audits

FEDERAL REVIEWS AND AUDITS IN GENERAL

- 430.300 What Federal reviews and audits are.
430.301 Types and effects of reviews and audits.

PROGRAM AND FINANCIAL REVIEWS

- 430.305 Program and financial reviews in general.
430.306 Issues of compliance or conformity after review.

HEW AUDIT AGENCY REVIEWS AND AUDITS

- 430.310 What the HEW Audit Agency does.
430.311 Audit Agency reports.
430.312 Action after Audit Agency review.

Subpart E—Hearing Procedures for State Agencies

GENERAL

- 430.400 Scope.
430.401 General rules.

ARRANGEMENTS FOR HEARINGS

- 430.405 How to request hearing.
430.406 How request is acknowledged.
430.407 What the hearing issues are.
430.408 What the purpose of a hearing is.
430.409 Who presides.
430.410 How to be a party or an amicus curiae to a hearing.

CONDUCT OF HEARING

- 430.415 Authority of presiding officer.
430.416 Discovery.
430.417 How evidence is handled.
430.418 What happens to unsponsored written material.
430.419 What the record is.

AFTER THE HEARING

- 430.420 Posthearing briefs.
430.421 Decisions.
430.422 When a decision involving nonconformity or noncompliance becomes effective.

AUTHORITY: Sec. 1102 of the Social Security Act; 49 Stat. 647 (42 U.S.C. 1302).

Subpart A—Introduction

- § 430.0 Scope.

This part contains rules on grants to States under title XIX of the Social Security Act. This title authorizes Federal/State sharing of the costs of providing medical assistance to eligible individuals in the 50 States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, and the Northern Mariana Islands (90 Stat. 277). This

part is divided into five subparts as follows:

(a) Subpart A gives an overview of what is contained in this part and includes general definitions related to the Medicaid program.

(b) Subpart B describes State plans for Medicaid. It tells when a plan must be amended and how a new plan or plan amendment is submitted, processed, and appealed when it is disapproved.

(c) Subpart C contains rules for computing and authorizing payment of Federal grants. It includes rules on when State claims for Federal funds may be deferred or disallowed and on how disallowances may be appealed.

(d) Subpart D describes the types of State program reviews and audits conducted by Federal officials.

(e) Subpart E describes hearing procedures available to State agencies.

§ 430.1 Definitions.

As used in this subchapter, unless the context indicates otherwise:

"Act" means the Social Security Act and titles referred to are the titles of that act.

"Administrator" means the Administrator, Health Care Financing Administration.

"Approvable State plan or plan amendment" means a proposed plan or amendment which meets all applicable Federal requirements.

"Bureau Director" means the director of the Federal Medicaid program within HCFA.

"Central office" means the headquarters office of HCFA.

"Compliance" means that a State agency is carrying out in practice what is required by Federal statutes, regulations, and pertinent court decisions and contained in the approved State plan.

"Conformity" means that a State plan meets the requirements of Federal and State statutes, Federal regulations, and pertinent court decisions.

"Department" or "HEW" means the Department of Health, Education, and Welfare.

"Federal requirements" means Federal statutes, regulations, and instructions.

"FFP" or "Federal financial participation" means the Federal Government's share of a State's expenditures under the Medicaid program.

"HCFA" means the Health Care Financing Administration of HEW.

"Medicaid" means medical assistance provided under a State plan approved under title XIX of the act.

"Plan" or "State plan" means a comprehensive written commitment by a State agency, submitted under section 1902(a) of the act, to administer, or supervise the administration of, a Medicaid program in accordance with Federal

requirements. This does not include a State cost allocation plan as described in 45 CFR 205.150.

"Plan amendment" or "amendment" means an amendment to an approved State plan under title XIX of the act.

"Regional Medicaid Director" means the Regional Medicaid Director of the Medicaid program.

"Regional Office" means one of the regional offices of HCFA.

"Secretary" means the Secretary of Health, Education, and Welfare.

"State" means a political jurisdiction which is eligible to submit a Medicaid State plan to HEW for approval. It includes the District of Columbia, Guam, Puerto Rico, the Virgin Islands, and the Northern Mariana Islands.

"State agency" means the single State agency administering, or supervising the administration of, a State Medicaid plan.

Subpart B—State Plans and Plan Amendments

STATE PLANS AND AMENDMENTS IN GENERAL

§ 430.100 What a State plan is.

(a) A State plan is a detailed description of the nature and scope of a State's Medicaid program. It commits a State agency to administer the program in accordance with Federal requirements. Only proper program expenditures which are made under an approved plan are eligible for Federal financial participation. Once a plan is approved, it must be kept current through amendments so that HCFA can determine whether the plan continues to meet Federal requirements.

(b) HCFA will not consider any material as State plan material unless it is submitted as part of a State plan or plan amendment and approved by the Regional Medicaid Director. The State agency shall submit copies of current State operating manuals and other program materials to the Regional Medicaid Director as requested.

§ 430.101 When to amend a State plan.

(a) A State agency must amend its plan whenever:

(1) A new or amended Federal law or regulation requires a new provision or conflicts with an existing plan provision;

(2) A U.S. Supreme Court decision changes the interpretation of a law or regulation; or

(3) State law, organization, policy, or agency operation undergoes a significant change.

SUBMISSION OF STATE PLANS AND PLAN AMENDMENTS

§ 430.110 How to submit a proposed State plan or plan amendment.

(a) *General.* A State agency must submit a proposed State plan or plan amendment to the Regional Medicaid Director in accordance with HCFA instructions concerning format, content, time limits, transmittal forms, and procedures.

(b) *How plan amendments may be treated.* At the time of submittal, the State agency may ask to have a proposed plan amendment treated as a new plan.

(1) If such a request is made and the amendment is disapproved, the State agency has a right to a hearing under section 1116 of the Act and to judicial review. (See § 430.132.)

(2) If a proposed plan amendment is not treated as a new plan and the amendment is disapproved, the State agency may appeal as described in § 430.133.

(c) *Review by Governor.* When submitting a proposed plan or plan amendment to the Regional Medicaid Director, the State agency shall specify that the Governor:

(1) Was given 45 days to review the material and that the resulting comments, if any, are included in the submittal; or

(2) Did not wish to review the material.

(See 45 CFR 204.1 for State plan requirements regarding Governor's review.)

§ 430.111 How submittal date is determined.

(a) *General.* The submittal date of a proposed State plan or plan amendment is the date it is mailed to the regional office as established by the State agency (for example, in the form of a postmark, registered mail date, or affidavit of mailing). If the material is delivered by hand, the submittal date is that shown by the regional office date stamp.

(b) *When submittal date changes.* If a proposed State plan or amendment is not approvable because it does not meet a Federal requirement, the date on which the required change is mailed or delivered to the regional office becomes the submittal date.

(c) *When submittal date remains unchanged.* If a proposed State plan or amendment is approvable but requires clearer wording, that clarifying revision retains the date of the original submittal.

APPROVAL AND DISAPPROVAL OF PROPOSED STATE PLANS AND PLAN AMENDMENTS

§ 430.120 Who can approve or disapprove.

The Regional Medicaid Director has the authority to approve a proposed State plan or plan amendment, except in subject areas for which the Bureau Director has specifically reserved this authority. The Bureau Director has the authority to disapprove a plan or plan amendment. (See § 430.306 for rules on deciding that a previously approved plan provision no longer meets Federal requirements.)

§ 430.121 Partial or total approval.

(a) *State plan.* HCFA approves a State plan only if it meets all mandatory Federal requirements. If any required provision is unapprovable or is omitted, HCFA disapproves the entire plan. However, HCFA may disapprove sections of a plan which relate to optional Federal provisions without affecting approval of the rest of the plan.

(b) *Plan amendment.* HCFA need not approve or disapprove a proposed plan amendment in its entirety, regardless of whether the State agency has asked to have it treated as a new State plan. HCFA can approve amendments to specific parts of a State plan, and disapprove amendments to other parts.

§ 430.122 What the decision deadline is.

(a) *General.* Within 45 days of receipt in the regional office, the Regional Medicaid Director will approve a proposed State plan or plan amendment or forward it to the Bureau Director recommending disapproval. The date of receipt is the date shown by the regional office date stamp. The Bureau Director will issue a decision on approval or disapproval within 90 days of receipt in the regional office.

(b) *Extensions.* The State agency and the Regional Medicaid Director, or Bureau Director, may agree in writing to an extension of the 90-day period.

§ 430.123 Effective dates and FFP under approved State plans or amendments.

(a) *When a plan or amendment affecting FFP becomes effective.* An approved State plan or plan amendment which affects FFP becomes effective on the later of the following dates:

(1) The first day of the calendar quarter in which an approvable plan or amendment was submitted (see § 430.111 for submittal date); or

(2) The first date on which the plan or amendment is in operation statewide.

(b) *When an amendment not affecting FFP becomes effective.* When an amendment does not affect FFP, it be-

comes effective on the date set by the State agency.

(c) *When a State may submit claims for FFP.* A State agency may not submit claims for new or additional expenditures made under a plan or amendment until it has been approved.

§ 430.124 How State is notified.

(a) *Approval.* When the Regional Medicaid Director approves a proposed State plan or plan amendment, he or she notifies the State agency in writing.

(b) *Disapproval.* When the Regional Medicaid Director submits part or all of a proposed plan or plan amendment to the Bureau Director with a recommendation for disapproval, he or she notifies the State agency in writing of the recommendation. When the Bureau Director disapproves a proposed plan or amendment, he or she notifies the State agency in writing. The notice gives the reason for disapproval and informs the State agency that it has 60 days to request the Administrator to reconsider the decision (see § 430.130).

RECONSIDERATION OF PLAN MATERIAL DISAPPROVALS

§ 430.130 What reconsideration procedures apply.

(a) *For new State plans and plan amendments treated as new plans.* A State agency may request reconsideration of a disapproved State plan or plan amendment which is treated as a new State plan. For purposes of this subpart, the term "new plan material" includes both categories.

(b) *For plan amendments not treated as new plans.* A State agency also may request reconsideration of disapproval of a plan amendment which is not treated as a new plan under § 430.133.

§ 430.131 What happens to FFP pending outcome of reconsideration.

When a State agency requests reconsideration of a disapproval of a new State plan or plan amendment, FFP in any new or increased expenditures under the disapproved plan or amendment is not available while the disapproval is under reconsideration. If the reconsideration decision is favorable to the State agency, the Bureau Director will certify lump-sum payment of any amount due.

§ 430.132 Prehearing procedures for reconsideration of new plan material.

(a) *How to request.* A State agency has 60 days from receipt of HCFA's written notice of disapproval of new plan material to request a reconsideration. The State agency must make the request in writing to the Adminis-

trator with a copy to the Regional Medicaid Director.

(b) *Acknowledgement of request.* Within 30 days of receiving a reconsideration request under paragraph (a) of this section, the Administrator notifies the State agency by letter of the date, time, and place of a hearing and of the issues to be considered. (See subpart E for hearing procedures.)

(c) *Judicial review.* If a State agency is not satisfied with a prehearing decision, it may seek judicial review in the U.S. Court of Appeals for the circuit in which the State is located.

(d) *Administrator determines related issues exist.* If a State agency requests a prehearing on the disapproval of a proposed plan or plan amendment, the Administrator may also determine whether a related compliance issue exists. If it does, that issue may be included in the hearing as described in § 430.407.

§ 430.133 Procedures for reconsideration of a disapproved plan amendment not treated as a new plan.

(a) *How to request.* A State agency has 60 days from receipt of the Bureau Director's written notice of disapproval to request a reconsideration. The State agency shall make the request in writing to the Administrator with a copy to the Regional Medicaid Director.

(b) *Acknowledgement of request.* The Administrator acknowledges a State agency's request for reconsideration promptly and in writing.

(c) *Submittal of information.* (1) The Administrator will promptly send the State agency a list of all material that is part of the record. The Administrator will also make this material available for the State agency's inspection and copying.

(2) The Regional Medicaid Director and the State agency have 30 days from the date of the Administrator's list to submit any additional supporting material to the Administrator and to each other. If the Regional Medicaid Director or the State agency submits additional material, the other party has 20 days from the transmittal date to respond in writing to the Administrator.

(d) *Right to conference.* (1) At any time during the period allowed under paragraph (c) of this section, the State agency may request a conference with the Administrator to discuss the issues.

(2) The State agency may have the conference transcribed at its own expense. Upon its request, the transcript becomes part of the record.

(e) *What the record is.* All materials considered in reaching a decision constitute the record of a reconsideration. The record closes on the later of the following dates:

(1) Expiration of the period allowed under paragraph (c) of this section;

(2) If there is a conference and the transcript becomes part of the record, upon the Administrator's receipt of the transcript; or

(3) If there is a conference and the transcript does not become part of the record, 30 days after the conference.

(f) *How the decision is issued.* Within 60 days after the record is closed, the Administrator or the person designated to preside at the conference will send a written decision to the head of the State agency.

(g) *Extension of time limits.* Either the State agency or the Regional Medicaid Director may, for good cause, request an extension of the time limits in this section.

Subpart C—Awards and Payments to States

AWARDS AND PAYMENTS IN GENERAL

§ 430.200 When FFP may be claimed.

(a) *General.* A State agency may claim Federal funds for expenditures for medical services, training, and related administration under an approved State plan and other Federal requirements including prior approval of certain classes of expenditures as required, and conformity with an approved cost allocation plan.

(b) *Reimbursement for survey and certification of long term care facilities.* Grants to States under this subpart do not cover reimbursement for survey and certification of skilled nursing and intermediate care facilities for participation in Medicaid. Reimbursement for these activities will be made by HCFA directly to the State agencies responsible for establishing and maintaining health standards in these institutions.

§ 430.201 What the State agency is responsible for.

The State agency is responsible for making available all documentation required by HCFA in the format specified to establish the allowability of its claims for FFP. (See §§ 430.230-430.232 on deferrals and §§ 430.220-430.223 on disallowances.)

§ 430.202 Administration of grants.

(a) *General.* Unless otherwise indicated, all grants made to States under this part are subject to the provisions of 45 CFR Part 74, Administration of Grants.

(b) *Exception.* Subparts G, Matching and Cost Sharing, and I, Financial Reporting Requirements, of part 74 do not apply to these grants.

SUBMISSION OF CLAIMS

§ 430.210 How grant awards are issued.

(a) *Amount of grant.* The Bureau Director, subject to the availability of

Federal funds, issues a grant based on the estimated expenditures for each quarter. This estimate is reduced or increased to the extent of any overpayment or underpayment for any prior quarter for which adjustment has not already been made. Examples of adjustments which reduce or increase the grant award include:

(1) The difference between the estimate for a quarter and the amount claimed by the State agency on the expenditure statement for that quarter;

(2) Amounts (including penalties and audit exceptions) which the Administrator disallows;

(3) Amounts which the Regional Medicaid Director defers;

(4) Amounts which the Regional Medicaid Director has deferred and the Administrator later finds allowable;

(5) Amounts of recoveries, refunds, and collections as determined by the Administrator; and

(6) Amounts which exceed statutory limitations.

(b) *How State agency is notified.* The Bureau Director issues to the State agency a grant award which shows the amount awarded for each quarter. Accompanying the grant award is a form showing the basis on which the grant was computed. The Bureau Director also notifies the State Central Information Reception Agency of the grant award in accordance with section 201 of the Intergovernmental Cooperation Act of 1968.

(c) *How the grant is paid.* The Departmental Federal Assistance Financing System (DFAFS) pays the grant. Payment procedures are governed by subpart K of 45 CFR Part 45, Treasury Circular No. 1075, and the DFAFS Recipient Users Manual.

§ 430.211 How estimates are made.

(a) In accordance with HCFA instructions, at least 45 days before the beginning of the estimate quarter, a State agency shall submit to the Bureau Director, with a copy to the Regional Medicaid Director:

(1) Estimates of the total amount, and the Federal share, of expenditures for the program;

(2) A certification of the amount of State funds (and local funds, if applicable) appropriated or made available for the estimated expenditures signed by:

(i) A fiscal officer of the State, if required by State law or regulations; or
(ii) The agency's executive officer or designee; and

(3) If the funds certified as appropriated or made available are insufficient to cover the State's share of the estimated expenditures, a statement of the source from which the balance will be derived and when.

(b) This estimate and any investigation that the Bureau Director finds necessary form the basis for making the grant award for that quarter.

§ 430.212 How expenditures are claimed.

(a) *What the quarterly statement of expenditures is.* The quarterly statement of expenditures is an accounting for expenditures made during the quarter by the State agency and the State agency's claim for reimbursement.

(b) *How to submit the statement.* Within 30 days after the end of each calendar quarter, in accordance with HCFA instructions, the State agency shall submit to the Bureau Director, with a copy to the Regional Medicaid Director, a statement of expenditures for that quarter along with the necessary supporting schedules.

(c) *Rejection of statement.* If the quarterly statement of expenditures is based on estimates, it will be rejected. Indirect costs calculated under approved rates or in conformance with approved cost allocation plans are acceptable.

§ 430.213 How a grant award is computed.

(a) *Amount of grant.* The amount of each quarterly estimate of expenditures is:

(1) Increased or decreased by the amount by which the estimate for any prior quarter, as determined under § 430.211, was greater or less than the amount which should have been paid for that quarter; and

(2) Decreased by the Federal share of the net amount of recoveries, refunds, or collections made by the State during any quarter.

ALLOWANCE AND DISALLOWANCE OF CLAIMS

§ 430.220 Who can allow or disallow.

The Administrator has the authority to allow or disallow a paid or unpaid claim for FFP. As used in this subpart, the term "disallowance" does not include implementation of a decision to reduce or withhold FFP for lack of compliance or conformity. (See §§ 430.305-430.306 on compliance and conformity.)

§ 430.221 How a decision is made on a claim.

A State agency's claim for FFP is allowed or disallowed based on review and analysis of its quarterly statement of expenditures. In determining whether expenditures are allowable, either regional or central office officials may conduct onsite reviews involving examination of State agency accounting and operational records and discussions with State officials. (See subpart D on Federal Reviews.)

§ 430.222 What happens when a claim is disallowed.

(a) *General.* A disallowance is a finding by the Administrator that a claim by a State agency for FFP in expenditures is not properly chargeable to the program. Because of statutory penalties and limitations, the Administrator may also disallow expenditures on claims which are properly chargeable to the program.

(b) *How State agency is notified.* If any portion of the amount claimed on a quarterly statement of expenditures is disallowed, the Administrator's notice to the State agency includes pertinent information on amounts, dates, and reasons for the disallowance. The Administrator's notice also indicates that the State agency may request reconsideration of the disallowance as described in § 430.223 of this subpart.

(c) *How the State's grant for a disallowance is adjusted.* When a State agency's claim for FFP is disallowed, the Bureau Director will either amend the current grant or adjust the grant for the following quarter, subject to the provisions of §§ 430.240-430.243, to reduce the State's grant authority by the amount of the disallowance. Where the disallowed amount was previously deferred, no further adjustment will be made.

§ 430.223 How to appeal disallowance of a claim.

(a) *How to request.* A State agency has 45 days from the postmark date of HCFA's notice of disallowance to request reconsideration by the Departmental Grant Appeals Board under 45 CFR Part 16. The request shall be addressed to the Executive Secretary, Departmental Grant Appeals Board, with copies to the Bureau Director and the Regional Medicaid Director.

DEFERRAL OF CLAIMS PAYMENT

§ 430.230 What deferral is.

As used in this subpart, "deferral" means suspending the inclusion of a claim in the computation of a grant award pending the inspection and analysis of further information needed to establish the claim's allowability for FFP.

§ 430.231 How deferral occurs.

(a) *Basis for deferral.* The Regional Medicaid Director can defer including a claim in the computation of a grant award (see § 430.210) if it is of questionable allowability.

(b) *Notice to State agency.* The Regional Medicaid Director takes deferral action within 60 days after receiving an acceptable quarterly statement of expenditures. Within 15 days of the deferral action, the Regional Medicaid Director sends the State agency writ-

ten notification identifying the type and amount of the claim and the reason for deferral. The notice also requests the State agency to make available for inspection all materials that the Regional Medicaid Director considers necessary to determine the allowability of the claim.

(c) *How State agency responds.* Within 60 days of the Regional Medicaid Director's notice of deferral, the State agency makes any requested materials available to the Regional Office in readily reviewable form. If the State agency requests additional time to make materials available, the Regional Medicaid Director will give an additional period of no more than 60 days.

§ 430.232 How decision is made on a deferred claim.

(a) *Review of State agency materials.* The Regional Medicaid Director will review all materials furnished under § 430.231 and, within 30 days of their receipt, notify the State agency that it has 15 days from the date of this notice to make available revised or additional materials. If the State agency does not make the required materials available in readily reviewable form, the Regional Medicaid Director will promptly recommend disallowance of the claim (see § 430.220).

(b) *How action is taken on deferred claim.* (1) Within 90 days after the State agency has made all required material available in acceptable form, the Regional Medicaid Director will provide the Administrator written findings and recommendations on the allowability of the claim. The Regional Medicaid Director will at the same time notify the State agency of the findings and recommendations when the recommendations are to disallow the State agency's claim or any part of it.

(2) The State agency has 30 days from the date of the Regional Medicaid Director's notice of findings and recommendations to disallow to submit in writing to the Administrator any new relevant evidence, documentation, or arguments in support of the allowability of the deferred claim.

(3) Whether or not the State agency submits additional material, the Administrator will notify the State agency in writing of the decision on the allowability of the deferred claim within 30 days after the State agency has made any new relevant evidence, documentation, arguments, or other material available, or upon expiration of the 30 day submission period.

(4) When the Regional Medicaid Director's notice to the State agency is not issued within the 90 day period required by paragraph (b)(1) of this section, or the Administrator's notice is not issued within the 30 day limit re-

quired by paragraph (b)(3) of this section, the Bureau Director will include the amount of the claim in a grant award, subject to a later determination of allowability.

INSTALLMENT REPAYMENT OF FEDERAL FUNDS

§ 430.240 General.

(a) *When Federal funds must be repaid.* When a claim has been reimbursed and is later determined to be unallowable, the State agency must repay the unallowable amount.

(b) *When the State agency may repay in installments.* A State agency may repay in installments if:

(1) The total amount to be repaid exceeds 2½ percent of the State agency's share of annual expenditures incurred; and

(2) Before payment is otherwise due, the State agency notifies the Regional Medicaid Director in writing of its intention to repay in installments.

(c) *Exclusion of other installment repayments.* For purposes of §§ 430.240-430.243, the amount of a repayment does not include any amount previously approved for installment repayment.

§ 430.241 How to set the repayment schedule.

(a) *How many quarters the repayment may cover.* In order to determine the number of quarters over which repayment may be spread, the State agency computes this repayment as a percentage of the State agency's share of annual Medicaid expenditures. Using that percentage, the maximum number of calendar quarters over which a State agency may spread repayment is:

Total repayment amount as percentage of State share of annual Medicaid expenditures	Number of quarters to make repayment
2.5 pct. or less.....	1
Greater than 2.5, but not greater than 5.....	2
Greater than 5, but not greater than 7.5.....	3
Greater than 7.5, but not greater than 10.....	4
Greater than 10, but not greater than 15.....	5
Greater than 15, but not greater than 20.....	6
Greater than 20, but not greater than 25.....	7
Greater than 25, but not greater than 30.....	8
Greater than 30, but not greater than 47.5.....	9
Greater than 47.5, but not greater than 65.....	10
Greater than 65, but not greater than 82.5.....	11
Greater than 82.5, but not greater than 100.....	12
Greater than 100.....	13+

(b) *How much must be repaid in an installment.* (1) Except for the final repayment, the installment due for each quarter in a repayment schedule shall not be less than the following percentages of the State agency's share of annual Medicaid expenditures:

For each of the following quarters	Repayment installment may not be less than these percentages
1 to 4	2.5
5 to 8	5.0
9 plus	17.5

(2) If the State agency pays higher percentages during the early quarters of its repayment schedule, it applies any corresponding reduction in the minimum percentages first to the last repayment scheduled, then to the next to last, and so on.

§ 430.242 How to determine the State agency's share of expenditures.

(a) *General.* A State agency's share of annual expenditures is based on its most recently submitted quarterly State Agency statement of financial plan for medicaid. The State agency's share is the sum of its shares for four quarters, beginning with the quarter in which the first repayment is due.

(b) *Exception.* If the State's medicaid program has been terminated, the State agency's share, based on its quarterly statements of expenditures, is the sum of its shares of allowable actual expenditures for the last four quarters preceding the date on which the program was terminated.

§ 430.243 How to make repayment.

(a) *General.* The Bureau Director will deduct the repayment amount from each quarterly grant award in accordance with the repayment schedule.

(b) *Retroactive claims.* If the Administrator has allowed a State agency's retroactive claim for FFP, the Bureau Director will offset the amount of that claim against any amounts to be repaid by the State agency in installments under the medicaid program. (For purposes of this section, a retroactive claim is one applicable to any period ending 12 months or more prior to the beginning of the quarter in which Federal funds are to be paid). Under this provision, a State agency may:

- (1) Suspend repayments until the retroactive claim has been offset; or
- (2) Continue repayments until the reduced amount of its debt (remaining after the offset) has been paid in full.

(c) *When interest is charged on repayments.* HCFA will not charge interest on repayments unless required by court order.

Subpart D—Federal Program and Financial Reviews and Audits

FEDERAL REVIEWS AND AUDITS IN GENERAL

§ 430.300 What Federal reviews and audits are.

(a) *Reviews.* As used in this subpart D, a Federal review is any type of review necessary to determine whether a State plan continues to be approvable and whether State agency operations and claims for FFP are proper under Federal requirements and the approved State plan. A review may cover any aspect of the medicaid program.

(b) *Audits.* As used in this subpart D an audit is any type of audit necessary to determine whether State agency operations and claims for FFP are proper under Federal requirements and the approved State plan. An audit may cover any aspect of the medicaid program. The term "audit" includes, but is not limited to, audits by the General Accounting Office and the HEW Audit Agency.

§ 430.301 Types and effects of reviews and audits.

(a) *Types.* The types of Federal reviews and audits most often conducted are:

- (1) Program and financial reviews as described in §§ 430.305–430.306; and
- (2) HEW Audit Agency audits as described in § 430.310.

(b) *Effects.* Any review or audit may result in a disallowance or in formal compliance or conformity action.

PROGRAM AND FINANCIAL REVIEWS

§ 430.305 Program and financial reviews in general.

(a) *Responsibility for review.* The Regional Medicaid Director will conduct program and financial reviews at whatever times he or she considers appropriate. In doing so, the Regional Medicaid Director may make use of any procedures (including onsite review) or specialized assistance needed.

(b) *Purpose of review.* The purpose of a program or financial review is to determine the nature and scope of a State's medicaid program in relation to Federal requirements. Program and financial reviews include:

- (1) Determining the allowability of claims;
- (2) Evaluating a program's quality and the State agency's need for technical assistance;
- (3) Determining whether a State plan conforms with Federal requirements. (A question of conformity may arise when a State agency fails to submit an approvable plan amendment to implement a new Federal requirement; when previously approved

plan material no longer meets Federal requirements; or when plan material has been approved in error); and

(4) Determining whether the State's operating practices are in substantial compliance with the approved State plan and with Federal requirements.

(c) *Review findings.* HCFA will make all review findings available in writing to the State agency so that it can correct any unacceptable policy or practice. If a review results in disallowance of a claim, the procedures in §§ 430.222–430.223 will apply.

§ 430.306 Issues of compliance or conformity after review.

(a) *Regional Medicaid Director tries to resolve.* If the Regional Medicaid Director believes there is a compliance or conformity issue, he or she will try to obtain needed changes in the State agency's operating practice or the State plan.

(b) *Issue not resolved.* If the State agency does not make the change necessary to bring about compliance or conformity:

(1) The Regional Medicaid Director will recommend that the Bureau Director begin formal action;

(2) If the Bureau Director agrees that there is an issue of compliance or conformity, he or she will notify the State agency and give it an opportunity for a hearing under subpart E.

HEW AUDIT AGENCY REVIEWS AND AUDITS

§ 430.310 What the HEW Audit Agency does.

The HEW Audit Agency (Audit Agency) in the HEW Inspector General's Office conducts both routine and special reviews and audits. These are to assure that Federal funds are being spent properly and prudently.

§ 430.311 Audit Agency reports.

Upon completion of an audit or other review, the Audit Agency releases its final report. The report contains the Audit Agency's findings on the practices reviewed and the allowability of expenditures audited.

§ 430.312 Action after Audit Agency review.

When the Audit Agency questions a claim, the Administrator may disallow FFP and notify the State agency accordingly. When the Audit Agency finds problems of compliance, the Bureau Director decides whether to take formal compliance action and notifies the State agency accordingly.

Subpart E—Hearing Procedures for State Agencies

GENERAL

§ 430.400 Scope.

(a) *General.* The act requires that a State agency be given an opportunity for a hearing on certain matters. Hearing procedures described in this subpart apply to:

(1) Reconsideration of a disapproved State plan or plan amendment that is treated as a new plan; and

(2) Notification of formal compliance or conformity action.

(b) *Negotiations.* Nothing in this subpart limits negotiations between the Department and the State agency.

§ 430.401 General rules.

(a) *How to get records.* All papers filed in connection with a hearing are available for inspection and copying in the office of the HCFA hearing clerk. Individuals should direct inquiries to the Central Information Center, Department of Health, Education, and Welfare, 200 Independence Avenue SW., Washington, D.C. 20201.

(b) *How to file and serve papers.* Anyone who wishes to submit papers for the docket shall file with the HCFA hearing clerk an original and two copies, but only originals of exhibits and testimony transcripts. Anyone who wishes papers to be part of the record shall also serve copies on all parties by personal delivery or by mail. Service on a party's designated attorney is the same as service on the party.

(c) *When rules are suspended.* The Administrator or the presiding officer may, after notifying all parties, modify or waive any rule in §§ 430.401-430.421 if he or she decides the action is equitable and will not unduly prejudice the rights of any party.

ARRANGEMENTS FOR HEARINGS

§ 430.405 How to request hearing.

A State agency has 60 days from receipt of HCFA's written notice of State plan disapproval or intended compliance or conformity action to request a formal hearing. The State agency makes its request in writing to the Administrator with a copy to the Regional Medicaid Director.

§ 430.406 How request is acknowledged.

(a) *Notice of hearing.* Within 30 days of receiving a hearing request, the Administrator will notify the State agency in writing of the date, time, and place of the hearing and of the issues to be considered. The Administrator will also publish the hearing notice in the FEDERAL REGISTER.

(b) *When the hearing must be set.* The date set for a hearing will be at least 20, but not more than 60, days

from the date the State agency receives the hearing notice. However, the State agency and the Administrator may agree in writing to a different date.

§ 430.407 What the hearing issues are.

(a) *General.* The issues at a hearing are those included in the notice to the State agency described in § 430.405.

(b) *How the Administrator may add issues.* At least 20 days before a scheduled hearing, the Administrator will notify the State agency by letter of any additional issues to be considered. The Administrator will also publish this notice in the FEDERAL REGISTER. If the State agency does not receive its notice in the required time, any party may request the Administrator to postpone the hearing. If a request is made, the Administrator will set a new hearing date that is at least 20, but not more than 60, days from the date the State agency receives the hearing notice.

(c) *How actions by the State agency may cause the Administrator to add, modify, or remove issues.* The Administrator may add, modify or remove issues if, for example, the State agency:

(1) changes its practices to comply with Federal requirements and its State plan; or

(2) conforms its State plan to Federal requirements and pertinent court decisions.

(d) *What happens when State action causes the Administrator to add, modify, or remove issues.*

(1) If the Administrator specifies new or modified issues, the hearing will proceed on these issues.

(2)(i) If the Administrator removes an issue, the hearing will proceed on the remaining issues. If the Administrator removes all the issues, he or she will terminate the hearing proceedings. The Administrator may terminate hearing proceedings or remove issues before, during, or after the hearing.

(ii) Before removing any issue the Administrator will notify all parties other than the State of the issue. This notice contains the reasons for removing the issue. Within 20 days of the date of this notice the parties may submit comments in writing on the merits of the proposed removal. The Administrator will consider these comments and they become a part of the record.

§ 430.408 What the purpose of a hearing is.

The purpose of the hearing is to receive factual evidence, including expert opinion testimony, related to the issue. The presiding officer will not allow argument as evidence. How-

ever, he or she may allow argument in statements, memoranda, or briefs.

§ 430.409 Who presides.

The presiding officer at a hearing is the Administrator or a person he or she appoints. If the Administrator appoints a presiding officer, the Administrator will send copies of the appointment notice to all parties.

§ 430.410 How to be a party or an amicus curiae to a hearing.

(a) *HEW and State agency.* HEW and the State agency are parties to a hearing without having to request participation.

(b) *Other parties or amici curiae.* Any individual or group wishing to be a party or amicus curiae to a hearing must file a petition with the HCFA hearing clerk no more than 15 days following publication of the hearing notice in the FEDERAL REGISTER. A petitioner who wishes to be a party must also provide a copy of the petition to each party of record at that time.

(c) *What must be in a petition.* The petition must state concisely:

(1) The petitioner's interest in the proceedings;

(2) Who will appear for the petitioner;

(3) the issue on which the petitioner wishes to participate; and

(4) Whether the petitioner intends to present witnesses, if the petitioner wishes to be a party.

(d) *What happens to a petition.* (1) the presiding officer will determine promptly whether each petitioner has the necessary interest in the proceedings and permit or deny the petition accordingly and in writing. Before making this determination the presiding officer will allow any party to file comments on the petition to be a party. Any party wishing to file comments must do so within 5 days of receiving the petition. If the presiding officer denies the petition, he or she will state the reasons.

(2) The presiding officer may decide that individuals or groups, who have become parties on petition, have common interests. He or she may then request that they designate a single representative or may recognize one or more of the parties to represent all of them.

(e) *What rights parties have.* Any party may:

(1) Appear by counsel or other authorized representative in all hearing proceedings;

(2) Participate in any prehearing conference held by the presiding officer;

(3) Stipulate facts that, if uncontested, will become part of the record;

(4) Make opening statements;

(5) Present relevant evidence;

(6) Present witnesses who must be available for cross-examination by other parties;

(7) Present oral arguments at the hearing; and

(8) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

(f) *What rights amici curiae have.* Any amicus curiae may:

(1) Present an oral statement at the hearing at the point in the proceedings specified by the presiding officer;

(2) Submit a written statement of position to the presiding officer before the hearing begins;

(3) Submit a brief or written statement at the same time as the parties submit briefs.

If an amicus curiae submits a written statement or brief, he or she shall serve a copy on each party.

CONDUCT OF HEARING

§ 430.415 Authority of presiding officer.

(a) *General.* It is the duty of the presiding officer to conduct a fair hearing, avoid delay, maintain order, and make a record of the proceedings. He or she has authority to carry out these duties. This includes the authority to:

(1) Regulate the course of the hearing;

(2) Regulate the participation and conduct of parties, amici curiae, and others at the hearing.

(3) Rule on procedural matters and, if necessary, issue protective orders or other relief to a party against whom discovery is sought;

(4) Take any action authorized by the rules in this subpart or in conformance with 5 U.S.C. 551-559;

(5) Make a final decision, if the Administrator is the presiding officer;

(6) Administer oaths and affirmations;

(7) Examine witnesses; and

(8) Receive or exclude evidence, or rule on or limit evidence or discovery.

(b) *What the presiding officer cannot do.* The presiding officer does not have the authority to compel by subpoena the production of witnesses, papers, or other evidence. 000

(c) *When the presiding officer's authority is limited.* If the presiding officer is not the Administrator, he or she does not have the authority to:

(1) Make a final decision, but shall certify the entire record to the Administrator, including recommended findings and decisions;

(2) Recommend reduction or withholding of FFP in matters of compliance and conformity.

§ 430.416 Discovery.

Any party has the right to conduct discovery against other parties. These

discovery proceedings are subject to rules 26-37, Federal Rules of Civil Procedure. The presiding officer shall promptly rule on any written objection to discovery and may restrict or control discovery so as to prevent undue delay in the hearing. If any party fails to respond to discovery procedures, the presiding officer may issue any order and impose any sanction (other than contempt orders) authorized by rule 37 of the Federal Rules of Civil Procedure.

§ 430.417 How evidence is handled.

(a) *Testimony.* Witnesses, under oath or affirmation, give oral testimony at a hearing. All witnesses must be available at the hearing for cross-examination by all parties.

(b) *Rules of evidence.* Technical rules of evidence do not apply to hearings described in this subpart. The presiding officer applies whatever rules or principles are necessary to assure disclosure of the most credible evidence available and to subject testimony to cross-examination. Cross-examination may be on any material matter regardless of the scope of direct examination.

§ 430.418 What happens to unsponsored written material.

Letters and other written material regarding matters at issue, when not submitted specifically on behalf of one of the parties, become part of the correspondence section of the docket. This material is not part of the evidence or the record.

§ 430.419 What the record is.

(a) *Official transcript.* HEW designates the official reporter for a hearing. The HCFA hearing clerk has the official transcript of testimony, as well as any other materials submitted with the official transcript. The parties and the public may obtain transcripts of testimony from the official reporter at rates which do not exceed a maximum fixed by contract between the reporter and HEW. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.

(b) *Record.* The record for the hearing decision consists of the transcript of testimony, exhibits, and all papers and requests filed in the proceedings except for the correspondence section of the docket. The record includes rulings and any decisions.

AFTER THE HEARING

§ 430.420 Posthearing briefs.

The presiding officer shall fix the time for filing posthearing briefs.

These may contain proposed findings of fact and conclusions of law. The presiding officer may permit filing of reply briefs.

§ 430.421 Decisions.

(a) *When the Administrator is presiding officer.* If the Administrator appoints a presiding officer:

(1) After the time for filing posthearing or reply briefs has expired, the presiding officer shall certify the entire record including his or her recommended findings and proposed decision to the Administrator.

(2) The Administrator will provide copies of the recommended findings and proposed decisions to all parties and amici curiae. Within 20 days, a party may file with the Administrator exceptions to the recommended findings and proposed decision. The party must file a supporting brief or statement with the exceptions.

(3) The Administrator will review the presiding officer's recommended findings and proposed decision and, within 60 days of receiving them, issue a final decision. The Administrator will provide copies of that decision to all parties and amici curiae.

(c) *When the decision involves nonconformity or noncompliance.* When the Administrator decides, after a formal hearing, that nonconformity or substantial noncompliance exists, the final decision will state whether further payments to the State agency will be withheld entirely or will be limited to categories not affected.

§ 430.422 When a decision involving nonconformity or noncompliance becomes effective.

The Administrator's decision will specify the effective date for any withholding of Federal payments because of nonconformity or substantial noncompliance. This effective date cannot be earlier than the date of the Administrator's decision or later than the first day of the next calendar quarter.

(Sec. 1102 of the Social Security Act; 49 Stat. 647 (42 U.S.C. 1302).)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program.)

Dated: June 12, 1978.

WILLIAM D. FULLERTON,
Acting Administrator, Health Care
Financing Administration.

Approved: August 19, 1978.

HALE CHAMPION,
Acting Secretary.

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