** Rules and Regulations **

Cleveland, OH—Cleveland-Hopkins International, ILS Rwy 5R, Amtd. 6

Cleveland, OH—Cleveland-Hopkins International, ILS Rwy 23L, Amtd. 1

Cleveland, OH—Cleveland-Hopkins International, ILS Rwy 28R, Amtd. 15

* * *

** Effective April 19, 1979 **

San Diego, CA—San Diego Intl-Lindbergh Field, ILS Rwy 9, Amtd. 9

Pueblo, CO—Pueblo Memorial, ILS Rwy 7L, Amtd. 18

Pueblo, CO—Pueblo Memorial, ILS Rwy 25R, Amtd. 6

Youngstown, OH—Youngstown Municipal, ILS Rwy 14, Original

Hagerstown, MD—Hagerstown Regional, ILS Rwy 27, Amtd. 2

Detroit, MI—Detroit Metropolitan-Wayne County, ILS Rwy 3R, Amtd. 3

Pontiac, MI—Oakland-Pontiac, ILS Rwy 9R, Amtd. 8

* * *

** Effective March 22, 1979 **

Moses Lake, WA—Grant County, ILS Rwy 32R, Amtd. 14

* * *

** Effective April 5, 1979 **

Houston, TX—Hull Field, RNAV Rwy 35, Amtd. 3

Pascagoula, MS—Jackson County, RNAV Rwy 22, Amtd. 2

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); sec. 8(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.49(b)(33)J)

Notes.—The FAA has determined that this document involves a regulation which is not significant under the procedures and criteria prescribed by Executive Order 12044 and implemented by Interim Department of Transportation guidelines (43 FR 9582, March 8, 1978).


** James M. Vines, Chief, Aircraft Programs Division. **

** Effective January 25, 1979 **

Law Enforcement Compliance Record Requirements: Effective Date

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of OMB approval.

SUMMARY: This notice prescribes the effective date for certain recording requirements regarding compliance with law enforcement actions under §107.23 was deferred until 30 days after a notice of the approval was published. On January 18, 1979, OMB approved those requirements. A copy of the OMB approval, including the PAA reporting forms approved for use by airport operators, may be examined at the Federal Aviation Administration, Office of the Chief Counsel, Rules Docket, 800 Independence Ave., SW., Washington, D.C. 20591.

** Notice of Effective Date **

Accordingly, the provisions of §107.23 of Part 107 of the Federal Aviation Regulations (14 CFR Part 107) will be effective March 29, 1979.

(Secs. 313, 315, 316, and 601, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1356, 1357, and 1421), sec. 8(c), Department of Transportation Act (49 U.S.C. 1655(c))).

Issued in Washington, D.C., on February 6, 1979.

** Jonathan Howe, Acting Chief Counsel. **

** Effective January 29, 1979 **

** Effective January 25, 1979 **

** Effective March 22, 1979 **

** Effective January 29, 1979 **

** Effective January 25, 1979 **

Rules Docket, 16245; Reference Revision of Part 107)

PART 107—AIRPORT SECURITY

[4910–13–M]

[4410–01–M]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

[Order No. 812–791]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Subpart M—Land and Natural Resources Division; Delegating to the Assistant Attorney General of the Land and Natural Resources Division the Duties Imposed Upon the Attorney General by Section 115(b) of the “Uranium Mill Tailings Radiation Control Act of 1978”;

Correction

AGENCY: Department of Justice.
ACTION: Final rule.
SUMMARY: In FR Doc. 79-1481 appearing at page 3273 in the Federal Register of January 16, 1979, paragraph "(h)" of § 0.68 is corrected to read paragraph "(i)."

FOR FURTHER INFORMATION CONTACT:

Dated: February 8, 1979.

LEON ULMAN,
Deputy Assistant Attorney General, Office of Legal Counsel.

(FR Doc. 79-5012 Filed 2-14-79; 8:45 am)

[4810-25-M]

Title 31—Money and Finance:
Treasury

SUBTITLE A—OFFICE OF THE SECRETARY OF THE TREASURY

PART 5—CLAIMS COLLECTION

AGENCY: Department of the Treasury.

ACTION: Final Rule.

SUMMARY: This amends the Treasury Department's Claims Collection regulations at 31 CFR Part 5 by raising the dollar limit of claims which may be administratively terminated, without referral to legal counsel, from $50 to $100.

EFFECTIVE DATE: This amendment is effective February 15, 1979.

FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION: Section 5.3 of Title 31 of the Code of Federal Regulations is being amended so that efforts by the Treasury Department to collect claims of $100 or less due to the Department of the Treasury can be terminated without having to be referred to counsel. Previously, only claims for $50 or less could be terminated without such referral. It has been determined that it would be cost effective to permit bureaus or offices to compromise or terminate claims under $100 without referral to counsel, since claims which previously would have been in the under $50 category are now in the $50-$100 category.

Although the Department considers all regulations, or amendments to existing regulations, published in the Federal Register and codified in the Code of Federal Regulations to be significant regulations, it has been determined that this final rule is not a significant regulation within the meaning of Executive Order 12044, March 24, 1978, "Improving Government Regulations" and the Department's regulations implementing that Order, 43 FR 52120, November 8, 1978, because it is not substantive, essentially procedural and it does not impose substantive additional requirements or costs on, or substantially alter the legal rights or obligations of, those affected by this rule. Additionally, as this amendment pertains to a rule of agency policy, organization, or procedure, notice and public procedure respecting it is not deemed necessary or appropriate pursuant to 5 U.S.C. 553(b)(A).

§ 5.3 [Amended]

Accordingly, § 5.3 of 31 CFR Part 5 is amended as follows:

Substitute "$100" for "$50" in the last sentence of the section.

W. J. Macdonald,
Acting Assistant Secretary
(Administration).


(FR Doc 79-4952 Filed 2-14-79; 8:45 am)

[3710-08-M]

Title 32—National Defense

CHAPTER V—DEPARTMENT OF THE ARMY

(AR 501-210)

PART 571—RECRUITING AND ENLISTMENTS

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Army has amended the rule on recruiting and enlistments to announce minor changes in the program. In addition the text has been rewritten to reduce the number of pages and to make the regulation easier to read and understand. The provisions of this regulation are designed primarily for use by the U.S. Army Recruiting Command (USAREC) and those overseas commands that exercise recruiting responsibilities.

EFFECTIVE DATE: October 1, 1978.

FOR FURTHER INFORMATION CONTACT:
Sergeant Major W. R. Baird at (202) 695-1463 or write: HQDA (DAPE-MPR-P), WASH DC 20310.


C. M. Matthews,
Lieutenant Colonel, GS,
Acting Chief, Policy Branch.

In consideration of the above, 32 CFR is amended by revising Part 571 to read as follows:

PART 571—RECRUITING AND ENLISTMENTS

Sec.
571.1 General.
571.2 Basic qualifications for enlistment.
571.3 Waivable enlistment criteria including civil offenses.
571.4 Periods of enlistment.
571.5 Enlistment options.

AUTHORITY: Sec. 3012, 70A Stat. 137; 10 U.S.C. 3012

§ 571.1 General.

(a) Purpose. This part gives the qualifications for men and women enlisting or reenlisting in the Regular Army (RA). The procedures simplify and standardize the processing of applicants through the recruiting service. The applicant's ability to meet all requirements or exceptions will determine eligibility. This includes obtaining prescribed waivers.

(b) Definitions. The following definitions apply to this part:

(1) Enlistment. The first voluntary enrollment in the Regular Army as an enlisted member.

(2) Reenlistment. The second or subsequent voluntary enrollment in the Regular Army as an enlisted member.

(3) United States Army. The Regular Army, Army of the United States (AUS), Army National Guard (ARNG) of the United States, and the United States Army Reserve (USAR).

(4) Regular Army (RA). The permanent Army, which is a major component of the United States Army, as used in this part distinguishes it from the other major components.

(5) Prior Service (PS). One or more days of completed active duty in a regular component or extended active duty in a Reserve component of any of the Armed Forces, in the Army National Guard or Army Reserve programs of active duty for training pursuant to the Reserve Forces Act of 1955; in the Reserve Enlistment Program of 1963; or in similar programs of any of the Army Forces. Short periods of active duty for training in any other programs will not meet prior service requirements in this part.

(6) Non-Prior Service (NPS). No previous service in any of the Armed Forces of the United States, or previous service without completion of 1 or more days of active duty or active duty for training as given in paragraph 5 of this section.

(7) Within 3 months of separation. The 3 months period when an individ-
(a) **Age requirements.** (1) Non-prior service. Applicants must be 17 to 34 years old, inclusive.

(2) Prior service. Applicants must be 17 to 34 years old. If 35 or older but less than 55 years, they will qualify if they:

(i) Have a minimum of 3 years honorable active service in any one of the Armed Forces, with at least 1 or more days of Army service.

(ii) Be not less than 35 years old plus the number of completed years of prior honorable active military service.

(3) Exceptions. Applicants will be exempt from the above age requirements if they can qualify for retirement by age 60, are not 55 or older with 20 or more years of active service, and if they are:

(i) Honorably discharged active duty commissioned or warrant officers who enlist within 6 months after their separation date or who were awarded the Medal of Honor, Silver Star, or the Distinguished Service Cross.

(ii) Enlisted members who separate from the Regular Army with an honorable or general discharge and reenlist within 3 months after separation date.

(4) Parental consent. The written consent of parents or legal guardian is required for applicants under 18 years of age.

(b) **Citizenship requirements.** The applicant must be:

(1) A citizen of the United States, or

(2) An alien who has been lawfully admitted to the United States as a permanent resident, or

(3) A National of the United States (Citizen of Puerto Rico, Guam, American Samoa or the Virgin Islands).

(c) **Trainability requirements.** (1) Non-prior service. For enlistment in mental group category I-III applicants must have a high school diploma (HSD) or General Education Development (GED) Certificate. HSD or GED scores must be 90 or above in one or more aptitude areas in Armed Services Vocational Aptitude Battery (ASVAB) tests. Mental group IV requires two. Non-high-school graduates (NHSG) in mental group I-IIIA require two. Applicants must meet all other criteria for the option they wish to select. (See §571.2(c)(3).)

(2) Prior service. Applicants must meet the mental requirements in paragraph (c)(3) of this section, or qualify for exemption from these requirements through:

(i) Award of the Medal of Honor.

(ii) Award of the Distinguished Service Cross, Navy Cross, or Silver Star Medal, with less than 20 years of active military service.

(iii) Partially disabling combat-wounds with less than 20 years of active military service.

(3) Mental categories and eligibility for enlistment.

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Age</th>
<th>Education level</th>
<th>Mental category</th>
<th>DEP</th>
<th>RA</th>
<th>Remarks</th>
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</thead>
<tbody>
<tr>
<td>NPS—male</td>
<td>17</td>
<td>HSO</td>
<td>I-IVB</td>
<td>Yes</td>
<td>Yes</td>
<td>10th grade minimum</td>
</tr>
<tr>
<td></td>
<td></td>
<td>GED</td>
<td>I-IIIA</td>
<td>Yes</td>
<td>Yes</td>
<td>unless over 22 years old, then 11th grade minimum</td>
</tr>
<tr>
<td></td>
<td></td>
<td>NISG</td>
<td>I-III-B-IV</td>
<td>No</td>
<td>No</td>
<td>11th grade minimum</td>
</tr>
<tr>
<td>NPS—male</td>
<td>18 or older</td>
<td>HSO</td>
<td>I-IVB</td>
<td>Yes</td>
<td>Yes</td>
<td>11th grade minimum regardless of age</td>
</tr>
<tr>
<td></td>
<td></td>
<td>GED</td>
<td>I-IIIB</td>
<td>Yes</td>
<td>Yes</td>
<td>unless over 22 years old, then 11th grade minimum</td>
</tr>
<tr>
<td></td>
<td></td>
<td>NISG</td>
<td>I-III-B</td>
<td>No</td>
<td>No</td>
<td>11th grade minimum</td>
</tr>
<tr>
<td></td>
<td></td>
<td>NHSG</td>
<td>IV</td>
<td>No</td>
<td>No</td>
<td>Eligible for RA if graduates. If NHSG, re- meet criteria of this marks, table.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>HESSR</td>
<td>I-IVB</td>
<td>Yes</td>
<td>Yes</td>
<td>these marks, table.</td>
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<tr>
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<td></td>
<td>HSO</td>
<td>WST 80 or higher</td>
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<td>Yes</td>
<td>Eligible for RA if graduates. If NHSG, re- meet criteria of this marks, table.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>GED</td>
<td></td>
<td>No</td>
<td>No</td>
<td>these marks, table.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>NISG</td>
<td></td>
<td>No</td>
<td>No</td>
<td>these marks, table.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>NHSG</td>
<td></td>
<td>Yes</td>
<td>Yes</td>
<td>these marks, table.</td>
</tr>
<tr>
<td>Applicant</td>
<td>Age</td>
<td>Education level</td>
<td>Mental category</td>
<td>DEF</td>
<td>RA</td>
<td>Remarks</td>
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<tr>
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<td>----------------</td>
<td>----------------</td>
<td>-----</td>
<td>----</td>
<td>---------</td>
</tr>
<tr>
<td>Prior service—male</td>
<td></td>
<td>HSQ</td>
<td>I-IIIB and three</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
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<tr>
<td>Prior service—female</td>
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<td>GED</td>
<td></td>
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<tr>
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<tr>
<td>Prior service</td>
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<td>HSQ</td>
<td>Three aptitude scores</td>
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<td>GED</td>
<td>scores of 90 or higher</td>
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<td></td>
</tr>
<tr>
<td>Prior service</td>
<td></td>
<td>NHI</td>
<td></td>
<td>No</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

*Education definitions:*

a. High school graduate (HSQ). An applicant who has graduated from an accredited high school with a diploma, a certificate of graduation, or statement of completion.

b. General Education Development (GED) equivalency. An applicant who has evidence of completion of the high school level GED equivalency.

c. Non-high school graduate (NHSQ) and high school senior (HSSR). Self explanatory.

d. Prior service. Same as non-prior service for pay grades E-1 through E-3. If eligible for pay grade E-4 or higher, may enlist without regard to number and ages of dependents. However, the provisions of paragraph (f)(1), (ii), (iii), (v), and (vi) of the above rule for applicants without prior service apply.

§ 571.3 Waivable enlistment criteria including civil offenses.

(a) Waivers of enlistment eligibility criteria—(1) General. This section gives the procedures for initiating and processing requests for waiver to meet the basic qualifications for enlistment.

(b) All waiver authority. The Commander, U.S. Army Enlistment Eligibility Activity (USAAEEA) may act for the Commanding General, U.S. Army Military Personnel Center (MILPER-CEN) to process, approve and disapprove waivers for enlistment.

(c) Waiver disapproval authority. The responsibility for deciding if a waiver request warrants favorable consideration rests at all levels.

(d) Validity period. Unless otherwise stated in the waiver document, waivers are valid for 6 months.

(e) Waiver approval authorities—eligibility criteria.

If disqualification is— Then approval authority is—

(i) Medical: CO, USAEC
(ii) Prior service: CO, MILPER-CEN

(iii) An applicant may be enlisted when dependent children are in the custody of the other parent by court order, and the applicant is not required to provide child support. No waiver is required.

(iv) In meritorious cases, an applicant with a spouse may request waiver of paragraph (f)(1) of this section.

(v) Husband and wife teams who have one or more dependents under 18 years of age are disqualified. No waiver is authorized.

(vi) An applicant with a spouse on active duty with any Service who has 1 or more dependents under 18 years of age is disqualified. No waiver is authorized.
If the offense is—

(1) Minor traffic offenses

Then approval authority is—

CDR, Recruiting Area

(2) Minor non-traffic offenses

CDR, Recruiting Area

(3) Misdemeanors

CDR, DRC

(4) Juvenile felonies

CG, USAREC

(5) Adult felonies

CG, MILPERCEN

(6) Civil restraint of unconditional suspended sentence or unconditional

CDRs in lines (1) through (5) for the offenses involved

(c) Rules governing processing of moral waivers.

(1) Individuals requiring a misdemeanor waiver if arrested, cited, charged, or allowed to plead guilty to a lesser offense or to plead guilty to criminal possession of stolen property (value $100 or less). An arrest or questioning with no pre­

ferral of charges does not require a waiver. When charges are dismissed without determination of guilt no waiver is required. A waiver is not au­

thorized if a criminal or juvenile court charge is pending or if such a charge was dismissed or dropped at any stage of the court proceedings on condition that the offender enlist in a military service.

(2) To ensure equal treatment of all persons applying for RA enlistment, notwithstanding the wide variance in State statutes, the following guidance is furnished:

(i) Expunging of the record. Some states have procedures for (subse­quent) "expunging of the record," dismissal of charges, or pardon (upon evi­

dence of rehabilitation of the offender). Such action has the effect of ex­

tinguishing the "initial conviction" or "adverse juvenile adjudication." Under the State law, the applicant then has no record of conviction or adverse ju­

venile record. Despite the legal effect of this action, a waiver is re­

quired to authorize the RA enlistment of such an applicant. The record is also re­

quired to be revealed.

(ii) Juvenile and youthful offenses. To determine eligibility for RA enlist­

ment, a juvenile or youthful offense is defined as one committed by the appli­

cant under the age that the individual could enlist in the RA without paren­

tal consent. Offenses committed below the age of 18 are considered juvenile or youthful offenses regardless of dis­

position of civil authorities. For example, a juvenile felony is one committed by an applicant under 18, whether or not the result is a civil court convic­

tion or adverse juvenile judgements. On the other hand, an adult felony is one committed by an applicant when 18 years old or older, regardless of what type of court makes the decision.

(iii) Civil court conviction. This term means the decision of guilt by a court (or a jury) based either on the case’s merits, or on the defendant’s
§ 571.4 Periods of enlistment.
Enlistments are authorized for periods of 2, 3, 4, 5, or 6 years. The enlistee’s option determines the number of years.

§ 571.5 Enlistment options.
Personnel who enlist in the Regular Army for 2 or more years are authorized certain initial assignment choices. They must meet the criteria given in AR 601-210. Also, a valid Army requirement must exist for the skill under which enlisted.

(PFR Doc. 79-4955 Filed 2-14-79; 8:45 am)

[4110-35-M]

Title 42—Public Health

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

PART 442—STANDARDS OF PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

Skilled Nursing and Intermediate Care Facilities: Appeals Proceedings for Denial, Termination or Nonrenewal of Certifications and Provider Agreements

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

ACTION: Final Regulation.

SUMMARY: The rules require States to make appeals proceedings available to skilled nursing facilities and intermediate care facilities whose participation in the Medicaid program is being denied, terminated, or not renewed. The rules also require States to advise facilities participating in both Medicare and Medicaid that appeal of a denial, termination or nonrenewal of certification will be available through the Medicare review procedures at 42 CFR Part 405, Subpart O, and that any Medicare decision upon that review will be binding on Medicaid.

EFFECTIVE DATE: These rules become effective May 16, 1979.

FOR FURTHER INFORMATION, CONTACT:

James Conrad, Health Standards and Quality Bureau, HCFA, Room 322 East High Rise, 6401 Security Boulevard, Baltimore, Maryland 31325, Telephone: (301) 594-7855.

SUPPLEMENTARY INFORMATION: The current Medicaid statute and regulations do not require that States provide an appeals procedure to providers whose participation in Medicaid is denied, terminated or not renewed. These rules establish such procedures with respect to skilled nursing facilities (SNFs) and intermediate care facilities (ICFs).

1. SCOPE OF THESE RULES

On January 19, 1977, we proposed new rules which had two primary goals: (1) To offer States a means to make appeals proceedings available to SNFs’ and ICF’s for reviewing State agency decisions to deny or terminate a facility’s participation in Medicaid; and (2) to clarify the point at which Federal funding of Medicaid payments would cease for a facility that had been terminated from the Medicaid program. Included within the second issue were rules providing retroactive payments for terminated facilities which were determined, after an administrative or judicial appeal, to have been qualified to participate, and certain provisions relating to the coterminous nature of Medicare and Medicaid provider agreements, (43 FR 3666).

It was our intention to raise in that Notice the question whether Federal financial participation in payments to facilities should be continued throughout the hearing process and, more specifically, what effect State laws and court injunctions against States which continued State payments to facilities or extended their provider agreements throughout the hearing process should have on Federal Medicaid payments. We now believe, however, that these issues were not adequately addressed in the Notice. We have, therefore, decided not to issue final rules on the Federal financial participation questions contained in the Notice at this time. We intend to address those issues specifically in a new Notice of Proposed Rulemaking.

2. RECODIFICATION

Since publication of the Notice of Proposed Rulemaking, we have reorganized and rewritten the Medicaid regulations. (43 FR Part V, September 29, 1978.) The NPRM has, therefore, been revised to conform to the new organization and style of the Medicaid regulations.

SUMMARY OF NPRM AND FINAL RULES

1. APPEALS PROCEDURES FOR FACILITIES PARTICIPATING ONLY IN MEDICAID

The proposed rules would have required that States establish a two-part hearing process. The rules provided for an informal reconsideration process to be made available to a provider before the effective date of a denial or
termination action by the State. The content of the reconsideration was not specified in the proposed rules. The proposal also required that a full evidentiary administrative hearing be available to a provider within four months of the effective date of a denial or termination action (either before or after, at the State’s option.)

The specific administrative hearing process would have been formulated by the State but must have, at a minimum, provided for an impartial hearing officer, the right to call and examine witnesses, and a full re-examination of the basis for the determination.

The final rules make it clear that appeal procedures must be available in the case of a nonrenewal, as well as a denial or termination, of a facility’s certification or provider agreement. They retain the requirement that States provide facilities the opportunity for a full evidentiary hearing, but expanded the content of the full evidentiary hearing specified in the proposed rules. The hearing must include, at the least, timely written notice to the provider of the findings upon which the termination or denial is based and disclosure of the record on which the action is taken; the right of the provider to appear before an impartial reviewer to refute those findings; an opportunity for the provider to cross examine adverse witnesses; the conduct of the hearing by an impartial decision maker; and issuance of a written decision by the impartial decision maker setting forth the reasons for his decision and the evidence upon which he based that decision.

The final rules also clarify the relationship between the informal reconsideration and the full evidentiary hearing. The State must provide either an informal reconsideration proceeding or a full evidentiary hearing, but not both, before the effective date of an action. The State must provide the informal reconsideration proceeding only if it elects to provide the full evidentiary hearing after the action.

The minimum elements of the reconsideration proceeding have also been spelled out in the final rules. The States may still develop and implement their own reconsideration proceedings. The final rules will not require that that process include, at a minimum, timely written notice of the reasons for the action, a reasonable opportunity for the facility to refute those reasons in writing, and a written decision prior to the effective date of the action.

The final rules also revise the proposed rules to provide that the appeals proceedings required prior to the denial or termination action must be completed prior to the effective date of the action. Any appeals proceeding required by the regulations after the action must be completed within 120 days after that action.

Both the informal reconsideration proceeding and the full evidentiary hearing proceedings may be formulated by the States in accordance with State law and practice, so long as they also meet these essential requirements.

2. PROVISIONS APPLICABLE TO FACILITIES PARTICIPATING IN BOTH MEDICARE AND MEDICAID

The current Medicaid regulations require that a Medicaid provider agreement be subject to the same terms and conditions as a Medicare agreement and that it be coterminous with the Medicare agreement. (42 CFR 442.20)

When the Secretary notifies the Medicaid agency that a Medicare agreement with a SNF has been terminated, the State must terminate its Medicaid agreement with that facility. In addition, the State may not enter into another agreement with that facility until the conditions causing the termination are removed and the facility provides reasonable assurance to the survey agency that the conditions will not recur.

The proposed rules expanded § 442.20 to make it applicable also to cases of denials and nonrenewals. The proposed rules also added new requirements that facilities participating jointly in Medicare and Medicaid must pursue the Medicare appeals process if they wish to appeal a denial, termination, or nonrenewal of certification and that States be consistent with this requirement. The decision rendered in the Medicare process would be binding on the facility’s Medicaid participation.

The final rules retain these provisions of the proposed rules.

ANALYSIS OF PUBLIC COMMENTS

We received twenty seven comments on the January 19, 1977 Notice of Proposed Rulemaking. The comments were addressed primarily to the questions whether a full evidentiary hearing should be provided prior to the termination or denial action, whether the time periods in which the informal reconsideration proceeding and full evidentiary hearing must take place should be revised, and whether the particular elements of the reconsideration and evidentiary hearing proceedings should be revised.

The comments and our responses are as follows:

1. FULL EVIDENTIARY HEARING PRIOR TO ACTION

Comment: Some commenters argued that a full evidentiary hearing be provided prior to the termination action. Some commenters argued that a failure to provide such a hearing violated the facility’s constitutional due process rights. One commenter noted that the failure to require full evidentiary pre-termination hearings was inconsistent with previous court decisions: Hathaway v. Mathews, 546 F. 2d 227 (7th Cir. 1976); Case v. Weinberger, 523 F. 2d 602 (1976); and Ross v. State of Wisconsin Department of Health & Social Services, 359 F. Supp. 578 (E.D. Wis. 1973) (per curiam).

Response: We do not agree that a full evidentiary hearing is constitutionally required prior to a facility’s exclusion from the program. We believe that the combination of an informal reconsideration proceeding prior to the State’s action and a full evidentiary hearing within 120 days after the action fully satisfies due process standards, as set forth by the United States Supreme Court in Mathews v. Eldridge, 424 U.S. 319 (1976), its recent leading case on due process requirements for governmental action terminating entitlement payments under the Social Security Act.

In Eldridge, the Supreme Court made clear that due process does not require a full evidentiary pre-termination hearing. The Court reaffirmed that the fundamental requirement of due process is the opportunity to be heard “at a meaningful time and in a meaningful manner” prior to adverse governmental action. 424 U.S. at 333. But “the ordinary principle *** is that something less than an evidentiary hearing is sufficient prior to adverse administrative action.” 424 U.S. at 343. “All that is necessary is that the procedures be tailored, in light of the decision to be made to ‘the capacities and circumstances of those who are to be heard,’ *** to insure that they are given a meaningful opportunity to present their case.” 424 U.S. at 349.

The Court in Eldridge set forth three factors to be evaluated in deriving the specific requirements of due process for a given situation:

(1) The private interest involved;
(2) The reliability of the process in making correct determinations and the probable value of additional safeguards; and
(3) The Government’s interest, including the fiscal and administrative burdens of additional safeguards.

In our view, the requirement that a full evidentiary hearing be completed within 120 days assures that the private interest of the nursing home is not subjected to long, severe deprivations. Moreover, the informal reconsideration assures a high degree of reliability for the State’s action and safeguards against an erroneous termination, denial or nonrenewal. We be-
lieve that requiring a full evidentiary hearing prior to the State's action would add to the State's administrative and fiscal burdens, by precluding prompt action and by requiring the continuation of benefit payments pending a conclusion of the hearing, without adding significantly to the reliability of the State's decision.

Our views on the constitutionality of this process are supported by the recent decision of the United States Court of Appeals for the Third Circuit in Town Court Nursing Center, Inc. v. Weinberger, 533 F.2d 137 (3d Cir. 1976).

The cases cited by the commenters do not detract from this conclusion. Note, e.g., the decision in Mathews v. Eldridge, determined that a Medicare-Medicaid nursing home which had received the opportunity for reconsideration of the decision to terminate prior to termination and the opportunity for a full evidentiary post-termination hearing, had received full due process protection.

We believe that the regulations should not make any unrealistic requirements on the States and the facilities to prepare their cases to be brought to hearing, particularly in light of the fact that the record of the State's decision will be available to the provider if he should so request it.

The regulations permit the States greater flexibility in the timing of the appeals provisions prior to termination or nonrenewal. Nonetheless, the Federal rules do not specify the timing for a survey and particular circumstances may require greater flexibility in the timing of the appeals provisions before termination or nonrenewal.

We also considered and rejected specifying timetables for each phase of the appeals proceedings. We believe that leaving these matters to the States serves two useful purposes: it permits the States greater flexibility to adopt any existing appeals procedures which are consonant with these rules and it permits the States to consider their particular needs, including the number of facilities potentially involved and State staff workloads, in developing the required appeals procedures.

The commentator argued that in order for the regulations to be consonant with these rules and it permits the States to consider their particular needs, including the number of facilities potentially involved and State staff workloads, in developing the required appeals procedures.

Comment: One commenter felt that several of the terms used in the proposed regulations, for example, "informal reconsideration", "administrative hearing", and "full reexamination" have no generally accepted meanings and should be defined more fully in the regulations. Some commenters offered suggestions of the specific elements to be included in the evidentiary hearing: An impartial hearing officer, a hearing officer who is a lawyer, a hearing officer who is not a lawyer, a reviewer who is not an employee involved in decertification or nonrenewal actions; timely written notice to the provider of the claimed violations; disclosure to the provider of the evidence against it; the right of the provider to be represented by retained counsel; an opportunity for the provider to be heard in person and to present witnesses and documentary evidence; an opportunity for the parties to confront and cross-examine adverse witnesses; a written statement by the hearing officer as to the evidence relied on and reasons for the action taken; and issuance of a hearing decision within the applicable time frames.

Response: We agree that greater specification as to the nature of the informal reconsideration and full evidentiary hearings proceedings is needed. For that reason, the final rules do spell out more fully the minimum requisites for these processes.

2. TIMING OF INFORMAL RECONSIDERATION AND EVIDENTIARY HEARING PROCEEDINGS

Comment: One commenter urged that the regulations specify how long before termination the informal reconsideration should take place. Another commented argued that in order for a pretermination hearing to he held four months before termination, the state survey would have to occur five to six months prior to expiration of the agreement.

Response: The proposed regulations did permit, but not require, the States to hold full evidentiary hearings as early as four months before denial or termination. We believe that the commenter raises a valid point: a health and safety survey five or six months before the beginning of the new provider agreement term may be too far away in time to constitute a meaningful-evaluation of the facility's status in that forthcoming term. Nonetheless, the Federal rules do not specify the timing for a survey and particular circumstances may require greater flexibility in the timing of the appeals provisions before termination or nonrenewal.

We also considered and rejected specifying timetables for each phase of the appeals proceedings. We believe that leaving these matters to the States serves two useful purposes: it permits the States greater flexibility to adopt any existing appeals procedures which are consonant with these rules and it permits the States to consider their particular needs, including the number of facilities potentially involved and State staff workloads, in developing the required appeals procedures.

Comment: One commenter expressed the view that there would not be time to hold an informal hearing before termination, because the provider is entitled to have until the last day of the agreement to correct deficiencies.

Response: While the provider agreement may be valid until the end of its term, the survey agency may nonetheless inspect the facility at any time and, if the inspection reveals deficiencies, move to cancel the provider agreement. A facility with deficiencies is not entitled to remain in the program until the expiration of its provider agreement. Nor is it entitled to remain in the program after the expiration of its provider agreement pending the completion of a hearing. This informal process prior to termination is intended to provide the facility with reasonable opportunity to continue the State that it should not be terminated, without hindering the State from taking prompt measures when necessary, subject to the full due process of an evidentiary hearing after the termination.

Comment: One commenter argued that the hearing process should be completed within a very short time after termination; another commenter felt that the Department should expand the allowable time period to provide for a hearing within eight months after termination.

Response: We believe that the time necessary to conduct properly a full evidentiary hearing is such that to shorten the time period during which the hearing must be held, after an action, to less than 120 days would place unrealistic requirements on the States. However, we also believe that an eight-month period is more than should be necessary for the States and the facilities to prepare their cases to be brought to hearing, particularly in light of the fact that the record of the State's decision will necessarily have been developed and disclosed to the provider before its action.

3. ELEMENTS OF THE INFORMAL RECONSIDERATION AND FULL EVIDENTIARY HEARINGS PROCEEDINGS

Comment: One commenter felt that several of the terms used in the proposed regulations, for example, "informal reconsideration", "administrative hearing", and "full reexamination" have no generally accepted meanings and should be defined more fully in the regulations. Some commenters offered suggestions of the specific elements to be included in the evidentiary hearing: An impartial hearing officer, a hearing officer who is a lawyer, a hearing officer who is not a lawyer, a reviewer who is not an employee involved in decertification or nonrenewal actions; timely written notice to the provider of the claimed violations; disclosure to the provider of the evidence against it; the right of the provider to be represented by retained counsel; an opportunity for the provider to be heard in person and to present witnesses and documentary evidence; an opportunity for the parties to confront and cross-examine adverse witnesses; a written statement by the hearing officer as to the evidence relied on and reasons for the action taken; and issuance of a hearing decision within the applicable time frames.

Response: We agree that greater specification as to the nature of the informal reconsideration and full evidentiary hearings proceedings is needed. For that reason, the final rules do spell out more fully the minimum requisites for these processes.

States may add additional elements to them (for example, the opportunity for an oral meeting in the reconsideration proceeding), but they must afford at least the protections specified in the rules.

Under the new rules, an informal reconsideration proceeding must provide at least the following: Written notice to the provider; a reasonable opportunity for the facility to refute those reasons in writing; and issuance of the decision to the provider prior to the effective date of the action.

A full evidentiary hearing under the new rules must provide at least timely written notice to the provider of the basis for the action and disclosure of the evidence on which the action is taken; the right of the provider to appear before an impartial reviewer to refute those reasons; the right of the provider to be represented by counsel or another representative; the opportunity of the provider or its representatives to be heard in person, to call witnesses, and to present documentary evidence; the opportunity of the provider to cross-examine witnesses; and a written decision by the impartial decision maker setting forth the reasons for his decision and the evidence upon which he based that decision.

We have rejected the suggestion that the hearing officer be a licensed lawyer. We believe that the States should have flexibility in obtaining individuals with the qualifications to conduct the reconsideration and evidentiary hearing proceedings and that individuals other than lawyers might also serve well in this capacity.

We also believe that such impartial individuals may well be within the same agency holding the informal reconsideration or full evidentiary hearing proceeding and might well be involved generally in certification or nonrenewal actions, and that that employment in itself should not bar an individual from serving as decision maker. We intend that the requirement of impartiality exclude any individual who has been directly involved (in a personal or supervisory capacity) in the survey or reconsideration of the facility being heard.

Comment: One commenter suggested that the regulations should provide for judicial review of the hearing decision.

Response: We believe that the decision whether there should be judicial review of these appeals proceedings should be left to State law, particularly in light of the diversity of appeals proceedings which might be established in accordance with these rules.

Comment: The proposed rules require the hearing to be held by the survey agency; the Medicaid agency should be allowed the option of being the hearing agency.

Response: The States should have flexibility in deciding how to formulate hearings proceedings, including use of a unified State hearing system. The State would have the responsibility of assuring that the agency performing this function had sufficient knowledge of and expertise on technical aspects of nursing home certification and provider agreement standards and processes.

Comment: The situations in which providers are entitled to an appeal are not clear when the Medicaid agency decides not to renew for reasons other than failure to meet certification standards.

Response: The final rules have been revised to clarify that the provider is entitled to an appeal not only of a certification decision, but also in the situation in which certification standards are met by the State, for other reasons (such as overbedding), decides not to issue the facility a provider agreement.

Comment: One commenter suggested that the hearing not be mandatory.

Response: We believe it is essential that there be a requirement that appeals proceedings be available. The facility is not required to pursue an appeal if it does not wish to.

Comment: One commenter suggested that the rules not apply to facilities in appeal status on the effective date of the new rule.

Response: We agree that it would be unduly disruptive of existing State hearing systems and proceedings to make these rules applicable to facilities against whom actions have already been taken. In order to provide adequate opportunity for the States to establish these procedures, the effective date of the rules will be delayed until 90 days after publication in the Federal Register. The appeals rules will apply to all facilities that are denied, terminated, or not reviewed after that date.

Comment: The appeals provisions should be expanded to cover audit adjustments of $5,000 or more.

Response: The final rules are designed to avoid injury which might result from an erroneous, total exclusion from the Medicaid program. Questions on audit exceptions would rarely have that impact and could well be decided after the action. In addition, many States have waived their sovereign immunity in contract actions and, therefore, other forums exist for a provider to achieve appropriate redress.

4. PROVISIONS APPLICABLE TO FACILITIES PARTICIPATING IN BOTH MEDICARE AND MEDICAID

Comment: Several commenters opposed these provisions. One suggested that they would require a State to continue a facility's Medicaid agreement for 30-60 days beyond its compliance with Federal standards and questioned the Secretary's authority under section 1910 of the Social Security Act to mandate State Medicaid expenditures for a facility which the State had found did not meet Medicaid standards.

Response: Section 1910 of the Social Security Act evinces a strong congressional policy that certification for Medicaid be coterminus with Medicare. The statute requires that whenever the Secretary certifies an institution in a State to be qualified as a SNF under Medicare, the institution shall be deemed to meet the standards for certification as a SNF for purposes of section 1902(a)(28). (See section 1910(a)(1) of the Act.) It also requires the Secretary to notify the State Medicaid agency of his approval or disapproval of any institution which has applied for certification by him as a qualified Medicare SNF. (Section 1910(a)(2) of the Act.) The Senate Report on this statutory provision states:

"The Committee's amendment provides, therefore, that determination of basic eligibility of skilled nursing homes under ... (Medicaid) be made by the Secretary, S. Rep. No. 92-1230 (92nd Cong. 2d Sess. 366 (1972))."

The Secretary's determination of the certifiability of the nursing home must be binding on the Medicaid agency.

Comment: A commenter objected to a requirement that a Medicare-Medicaid facility must report Medicare administrative and judicial review procedures; the commenter challenged Medicare procedures on the ground that they are constitutionally deficient in not providing hearings before termination or nonrenewal.

Response: We believe that the extensive Medicare reconsideration and hearings proceedings fully satisfy due process standards. (See Town Court Nursing Center v. Beal, supra.) Nonetheless, we intend to issue a Notice of Proposed Rulemaking raising the question whether the Medicare reconsideration process should be completed prior to termination, nonrenewal, or denial.

Comment: A provider should be permitted to withdraw voluntarily from Medicare and still continue in Medicare.

Response: We agree. It was not our intent to cover this situation in the NPRM, although we agree that the
§ 431.152 State plan requirements.

The State plan must provide for appeals procedures that, as a minimum, satisfy the requirements of §§ 431.153 through 431.155.

§ 431.153 Evidentiary hearing.

(a) Except as specified in paragraph (d) of this section, any SNF or ICF whose certification or provider agreement is denied, terminated, or not renewed must be given an opportunity for a full evidentiary hearing on the denial, termination or nonrenewal.

(b) If the facility requests a hearing, it must be completed either before the effective date of the denial, termination or nonrenewal or within 120 days after that date.

(c) The hearing must, at a minimum, include:

(1) Timely written notice to the facility of the basis for the decision and disclosure of the evidence on which the decision is taken;

(2) An opportunity for the facility to appear before an impartial decision maker to refute the basis for the decision;

(3) An opportunity for the facility to be represented by counsel or another representative;

(4) An opportunity for the facility or its representatives to be heard in person, to call witnesses, and to present documentary evidence;

(5) An opportunity for the facility to cross-examine witnesses; and

(6) A written decision by the impartial decision maker, setting forth the reasons for the decision and the evidence upon which the decision is based.

(d) If a SNF is participating, or seeking to participate, in both Medicare and Medicaid, and if the basis for the State's denial, termination or nonrenewal of participation in Medicaid is also a basis for denial, termination or nonrenewal of participation in Medicare, the State must advise the facility that:

(1) The facility is entitled to the review procedures specified for Medicare facilities in Part 405, Subpart O of this title, in lieu of the procedures specified in this subpart; and

(2) A final decision entered under the Medicare review procedures will be binding for purposes of Medicaid participation.

§ 431.154 Informal reconsideration.

(a) If the State decides to provide the opportunity for an evidentiary hearing required by § 431.153 only after the effective date of a denial, termination or nonrenewal, the State must offer the facility an informal reconsideration, to be completed before the effective date.

(b) The informal reconsideration must, at a minimum, include:

(1) Written notice to the facility of the denial, termination or nonrenewal and the findings upon which it was based;

(2) A reasonable opportunity for the facility to refute those findings in writing, and

(3) A written affirmation or reversal of the denial, termination, or nonrenewal.

PART 442—STANDARDS OF PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

2. 42 CFR 442.20(b) is revised to read as follows:

§ 442.20 Additional requirements for agreements with SNF's participating in Medicare.

* * * * *

(b) If the Secretary notifies the Medicaid agency that he has denied, terminated, or refused to renew a Medicare agreement with a SNF, the agency must deny, terminate, or refuse to renew its Medicaid agreement with that SNF. The denial, termination, or refusal to renew the Medicaid agreement must be effective on the same date as the denial, termination, or refusal to renew the Medicare agreement.

* * * * *

(Section 1102, Social Security Act (42 U.S.C. 1302))

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


LEONARD D. SCHAFFER,
Administrator, Health Care Financing Administration.


JOSEPH A. CALIFANO, Jr., Secretary.

(FR Doc. 79-4958 Filed 2-14-79; 8:45 am)
Subpart—Criteria for Determining the Delegation of Grant and Contract Making Authority to Regional Directors

AGENCY: Community Services Administration.

ACTION: Final rule.

SUMMARY: The Community Services Administration is filing a rule establishing criteria for delegating grant and contract making authority to Regional Directors. The proposed rule implements a 1978 Amendment to Section 601(c) of the Economic Opportunity Act of 1964, as amended, requiring the Director to promulgate rules and regulations regarding the final approval of grants and contracts. The effect of the rule is to allow for decentralization of authority to approve grants and contracts for which authority has been delegated to the Assistant Director for Community Action by delegating concurrent authority to Directors of Regional Offices meeting the stated criteria.

DATES: Effective date: This rule is effective March 19, 1979, since this affects CSA internal administration only. However, comments are welcome and will be considered in any future revision of the rule. Comments must be submitted on or before March 19, 1979.

ADDRESS: Send comments to: Joan Lenihan, Community Services Administration, Office of Community Action, 1200 19th Street, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT:
Joan Lenihan, Tel. (202) 254-5670, Teletypewriter: (202) 254-6218.

SUPPLEMENTARY INFORMATION: Section 601(c) of the Community Services Act of 1974 prohibited delegation of grant and contract making authority after June 15, 1978 to any regional official. The change created difficulty in maintaining accountability as grants and contracts were administered by Regional Offices, detailed records of eligibility and compliance status were located at those offices, but funding decisions were made at the Headquarters level by the Assistant Director for Community Action. However, the Economic Opportunity Amendments of 1976 returned authority to the Director to delegate grant and contract making authority to those officials, provided the Director promulgated rules and regulations regarding final approval of grants and contracts. This rule is designed to provide criteria which can be used by the Assistant Director for Community Action in determining whether grant and contract making power should be delegated to a regional official, after consultation with the Director.

(Rules of this subpart are issued under the authority of sec. 602, 78 Stat. 530; 42 U.S.C. 2942.)

GRACIELA (GRACE) OLIVAREZ, Director.

45 CFR 1067 is amended by adding a new subpart as follows:

Subpart—Criteria for Determining the Delegation of Grant and Contract Making Authority to Regional Directors

§ 1067.61-1 Applicability.

The criteria established in this subpart will be used to determine delegation of authority to Regional Directors for the approval of grants and contracts made under any section of the Economic Opportunity Act of 1964, as amended, for which funding authority has been delegated to the Assistant Director for Community Action.

§ 1067.61-2 Policy.

The determination whether to delegate grant and contract making authority to Regional Directors will be made by the Assistant Director for Community Action based on the following criteria:

(a) Whether the Regional Office has internal management systems adequate for the purpose of controlling obligations, processing applications and maintaining records. A Regional Office must have an acceptable allotment control register, established procedures to receive and process applications in a timely manner and records adequate to accurately reflect the status of grants, amendments thereto, and grantee compliance;

(b) Whether the Regional Office has grantee eligibility and compliance certification procedures adequate to ensure that major eligibility and compliance areas are reviewed prior to funding and that issues are resolved in a timely manner. This must include an acceptable system for the timely review and resolution of audit problems, and a satisfactory human rights plan for grantees; and

(c) Whether the Regional Office has an acceptable plan for overseeing grantee programs. Regional Offices must establish and carry out an oversight plan, including field visits to provide technical assistance to assure, in accordance with CSA requirements, grantee planning, proposed work programs, performance, eligibility and compliance; etc.

[FR Doc. 79-4676 Filed 2-14-79; 8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 19—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Employees Outside Activity or Employment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Recognizing that its rules may have discouraged past publishing activities by employees or appeared to do so, the FCC has amended its rules governing such activities. A prohibition on activities which will cause unfavorable and reasonable criticism of the Commission has been deleted. A prohibition against activities which reasonably might be regarded as official Commission actions or will bring discredit upon the Commission has been modified so as not to apply to publishing activities. A procedure for prior clearance of articles submitted for publication has been replaced by the requirement of a disclaimers disassociating the Commission from the article, if it identifies the author as a Commission employee. The use for an employee's private gain of publications which relate to his official responsibilities has been prohibited.


FOR FURTHER INFORMATION CONTACT:
Upton Guthery, Federal Communications Commission, Office of General Counsel, 202-632-6444.


Order. In the matter of amendment of §§ 19.735-203 rules and regulations.