

health care organization meets the requirements for participation in the Medicaid program.

(e) *Documents subject to disclosure.* Documents subject to disclosure include—

(1) Survey reports, except for Joint Commission on the Accreditation of Hospitals reports prohibited from disclosure under § 422.426(b)(2) of this chapter;

(2) Official notifications of findings based on survey reports;

(3) Pertinent parts of written documents furnished by the health care provider to the survey agency that relate to the reports and findings; and

(4) Ownership and contract information as specified in § 455.104 of this subchapter.

(f) *Availability for inspection and copy of statements listing deficiencies.* The disclosure procedure must provide that the State survey agency will—

(1) Make statements of deficiencies based on the survey reports available for inspection and copying in both the public assistance office and the Social Security Administration district office serving the area where the provider is located; and

(2) Submit to the Regional Medicaid Director, through the Medicaid agency, a plan for making those findings available in other public assistance offices in standard metropolitan statistical areas where this information would be helpful to persons likely to use the health care provider's services.

(g) *When documents must be made available.* The disclosure procedure must provide that the State survey agency will—

(1) Retain in the survey agency office and make available upon request survey reports and current and accurate ownership information; and

(2) Make available survey reports, findings, and deficiency statements immediately upon determining that a health care provider is eligible to begin or continue participation in the Medicaid program, or within 90 days after completion of the survey, whichever occurs first.

(h) *Evaluation reports on providers and contractors.* (1) If the Secretary sends the following reports to the Medicaid agency, the agency must meet the re-

quirements of paragraphs (h) (2) and (3) of this section in releasing them:

(i) Individual contractor performance reviews and other formal performance evaluations of carriers, intermediaries, and State agencies, including the reports of followup reviews;

(ii) Comparative performance evaluations of those contractors, including comparisons of either overall performance or of any particular aspect of contractor operations; and

(iii) Program validation survey reports and other formal performance evaluations of providers, including the reports of followup reviews.

(2) The agency must not make the reports public until—

(i) The contractor or provider has had a reasonable opportunity, not to exceed 30 days, to comment on them; and

(ii) Those comments have been incorporated in the report.

(3) The agency must ensure that the reports contain no identification of individual patients, individual health care practitioners or other individuals.

[43 FR 45188, Sept. 29, 1978, as amended at 44 FR 41644, July 17, 1979; 59 FR 56232, Nov. 10, 1994]

§ 431.120 State requirements with respect to nursing facilities.

(a) *State plan requirements.* A State plan must—

(1) Provide that the requirements of subpart D of part 483 of this chapter are met; and

(2) Specify the procedures and rules that the State follows in carrying out the specified requirements, including review and approval of State-operated programs.

(3) To an NF or ICF/MR that is dissatisfied with a determination as to the effective date of its provider agreement.

(b) *Basis and scope of requirements.* The requirements set forth in part 483 of this chapter pertain to the following aspects of nursing facility services and are required by the indicated sections of the Act.

(1) Nurse aide training and competency programs, and evaluation of nurse aide competency (1919(e)(1) of the Act).

(2) Nurse aide registry (1919(e)(2) of the Act).

[56 FR 48918, Sept. 26, 1991, as amended at 62 FR 43935, Aug. 18, 1997]

Subpart D—Appeals Process for NFs and ICFs/MR

SOURCE: 44 FR 9753, Feb. 15, 1979, unless otherwise noted.

§ 431.151 Scope and applicability.

(a) *General rules.* This subpart sets forth the appeals procedures that a State must make available as follows:

(1) To a nursing facility (NF) that is dissatisfied with a State's finding of noncompliance that has resulted in one of the following adverse actions:

(i) Denial or termination of its provider agreement.

(ii) Imposition of a civil money penalty or other alternative remedy.

(2) To an intermediate care facility for the mentally retarded (ICF/MR) that is dissatisfied with a State's finding of noncompliance that has resulted in the denial, termination, or nonrenewal of its provider agreement.

(3) To an NF or ICF/MR that is dissatisfied with a determination as to the effective date of its provider agreement.

(b) *Special rules.* This subpart also sets forth the special rules that apply in particular circumstances, the limitations on the grounds for appeal, and the scope of review during a hearing.

[61 FR 32348, June 24, 1996, as amended at 62 FR 43935, Aug. 18, 1997]

§ 431.152 State plan requirements.

The State plan must provide for appeals procedures that, as a minimum, satisfy the requirements of §§ 431.153 and 431.154.

[59 FR 56232, Nov. 10, 1994, as amended at 61 FR 32348, June 24, 1996]

§ 431.153 Evidentiary hearing.

(a) *Right to hearing.* Except as provided in paragraph (b) of this section, and subject to the provisions of paragraphs (c) through (j) of this section, the State must give the facility a full evidentiary hearing for any of the actions specified in § 431.151.

(b) *Limit on grounds for appeal.* The following are not subject to appeal:

(1) The choice of sanction or remedy.

(2) The State monitoring remedy.

(3) [Reserved]

(4) The level of noncompliance found by a State except when a favorable final administrative review decision would affect the range of civil money penalty amounts the State could collect.

(5) A State survey agency's decision as to when to conduct an initial survey of a prospective provider.

(c) *Notice of deficiencies and impending remedies.* The State must give the facility a written notice that includes:

(1) The basis for the decision; and

(2) A statement of the deficiencies on which the decision was based.

(d) *Request for hearing.* The facility or its legal representative or other authorized official must file written request for hearing within 60 days of receipt of the notice of adverse action.

(e) *Special rules: Denial, termination or nonrenewal of provider agreement.* (1) *Appeal by an ICF/MR.* If an ICF/MR requests a hearing on denial, termination, or nonrenewal of its provider agreement—

(i) The evidentiary hearing must be completed either before, or within 120 days after, the effective date of the adverse action; and

(ii) If the hearing is made available only after the effective date of the action, the State must, before that date, offer the ICF/MR an informal reconsideration that meets the requirements of § 431.154.

(2) *Appeal by an NF.* If an NF requests a hearing on the denial or termination of its provider agreement, the request does not delay the adverse action and the hearing need not be completed before the effective date of the action.

(f) *Special rules: Imposition of remedies.* If a State imposes a civil money penalty or other remedies on an NF, the following rules apply:

(1) *Basic rule.* Except as provided in paragraph (f)(2) of this section (and notwithstanding any provision of State law), the State must impose all remedies timely on the NF, even if the NF requests a hearing.

(2) *Exception.* The State may not collect a civil money penalty until after