

(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