

§ 441.256 Additional condition for Federal financial participation (FFP).

(a) FFP is not available in expenditures for any sterilization or hysterectomy unless the Medicaid agency, before making payment, obtained documentation showing that the requirements of this subpart were met. This documentation must include a consent from, an acknowledgement of receipt of hysterectomy information or a physician's certification under § 441.255(d)(2), as applicable.

(b) With regard to the requirements of § 441.255(d) for hysterectomies performed from March 8, 1979 through November 2, 1982, FFP is available in expenditures for those services if the documentation showing that the requirements of that paragraph were met is obtained by the Medicaid agency before submitting a claim for FFP for that procedure.

[47 FR 33702, Aug. 4, 1982]

§ 441.257 Informed consent.

(a) *Informing the individual.* For purposes of this subpart, an individual has given informed consent only if—

(1) The person who obtained consent for the sterilization procedure offered to answer any questions the individual to be sterilized may have concerning the procedure, provided a copy of the consent form and provided orally all of the following information or advice to the individual to be sterilized:

(i) Advice that the individual is free to withhold or withdraw consent to the procedure at any time before the sterilization without affecting the right to future care or treatment and without loss or withdrawal of any federally funded program benefits to which the individual might be otherwise entitled.

(ii) A description of available alternative methods of family planning and birth control.

(iii) Advice that the sterilization procedure is considered to be irreversible.

(iv) A thorough explanation of the specific sterilization procedure to be performed.

(v) A full description of the discomforts and risks that may accompany or follow the performing of the procedure, including an explanation of the type

and possible effects of any anesthetic to be used.

(vi) A full description of the benefits or advantages that may be expected as a result of the sterilization.

(vii) Advice that the sterilization will not be performed for at least 30 days, except under the circumstances specified in § 441.253(c).

(2) Suitable arrangements were made to insure that the information specified in paragraph (a)(1) of this section was effectively communicated to any individual who is blind, deaf, or otherwise handicapped;

(3) An interpreter was provided if the individual to be sterilized did not understand the language used on the consent form or the language used by the person obtaining consent;

(4) The individual to be sterilized was permitted to have a witness of his or her choice present when consent was obtained;

(5) The consent form requirements of § 441.258 were met; and

(6) Any additional requirement of State or local law for obtaining consent, except a requirement for spousal consent, was followed.

(b) *When informed consent may not be obtained.* Informed consent may not be obtained while the individual to be sterilized is—

(1) In labor or childbirth;

(2) Seeking to obtain or obtaining an abortion; or

(3) Under the influence of alcohol or other substances that affect the individual's state of awareness.

§ 441.258 Consent form requirements.

(a) *Content of consent form.* The consent form must be a copy of the form appended to this subpart or another form approved by the Secretary.

(b) *Required signatures.* The consent form must be signed and dated by—

(1) The individual to be sterilized;

(2) The interpreter, if one was provided;

(3) The person who obtained the consent; and

(4) The physician who performed the sterilization procedure.

(c) *Required certifications.* (1) The person securing the consent must certify, by signing the consent form, that