

services, consistent with the provisions of § 440.180(c) of this chapter, an explanation of why these services are not available as special education and related services under sections 602 (16) and (17) of the Education of the Handicapped Act (20 U.S.C. 1401 (16 and 17)) or as services under section 110 of the Rehabilitation Act of 1973 (29 U.S.C. section 730);

(i) For States offering home and community-based services for individuals diagnosed as chronically mentally ill, an explanation of why these individuals would not be placed in an institution for mental diseases (IMD) absent the waiver, and the age group of these individuals.

[46 FR 48532, Oct. 1, 1981, as amended at 50 FR 10027, Mar. 13, 1985; 50 FR 25080, June 17, 1985; 59 FR 37718, July 25, 1994]

**§ 441.304 Duration of a waiver.**

(a) The effective date for a new waiver of Medicaid requirements to provide home and community-based services approved under this subpart is established by HCFA prospectively on or after the date of approval and after consultation with the State agency. The initial approved waiver continues for a 3-year period from the effective date. If the agency requests it, the waiver may be extended for additional periods unless—

(1) HCFA's review of the prior waiver period shows that the assurances required by § 441.302 were not met; and

(2) HCFA is not satisfied with the assurances and documentation provided by the State in regard to the extension period.

(b) HCFA will determine whether a request for extension of an existing waiver is actually an extension request or a request for a new waiver. If a State submits an extension request that would add a new group to the existing group of recipients covered under the waiver (as defined under § 441.301(b)(6)), HCFA will consider it to be two requests: One as an extension request for the existing group, and the other as a new waiver request for the new group. Waivers may be extended for additional 5-year periods.

(c) HCFA may grant a State an extension of its existing waiver for up to 90 days to permit the State to document

more fully the satisfaction of statutory and regulatory requirements needed to approve a new waiver request. HCFA will consider this option when it requests additional information on a new waiver request submitted by a State to extend its existing waiver or when HCFA disapproves a State's request for extension.

(d) If HCFA finds that an agency is not meeting one or more of the requirements for a waiver contained in this subpart, the agency is given a notice of HCFA's findings and an opportunity for a hearing to rebut the findings. If HCFA determines that the agency is not in compliance with this subpart after the notice and any hearing, HCFA may terminate the waiver. For example, a State submits to HCFA a waiver request for home and community-based services that includes an estimate of the expenditures that would be incurred if the services were provided to the covered individuals in a hospital, NF, or ICF/MR in the absence of the waiver. HCFA approves the waiver. At the end of the waiver year, the State submits to HCFA a report of its actual expenditures under the waiver. HCFA finds that the actual expenditures under the waiver exceed 100 percent of the State's approved estimate of expenditures for these individuals in a hospital, NF, or ICF/MR in the absence of the waiver. HCFA next requires the State to amend its estimates for subsequent waiver year(s). HCFA then compares the revised estimates with the State's actual experience to determine if the revised estimates are reasonable. HCFA may terminate the waiver if the revised estimates indicate that the waiver is not cost-neutral or that the revised estimates are unreasonable.

[50 FR 10028, Mar. 13, 1985; 50 FR 25080, June 17, 1985, as amended at 59 FR 37719, July 25, 1994]

**§ 441.305 Replacement of recipients in approved waiver programs.**

(a) *Regular waivers.* A State's estimate of the number of individuals who may receive home and community-based services must include those who will replace recipients who leave the program for any reason. A State may replace recipients who leave the program due to death or loss of eligibility