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AUTHORITY: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

SOURCE: 45 FR 22937, Apr. 4, 1980, unless otherwise noted.

**Subpart A—General Provisions****§ 489.1 Statutory basis.**

This part implements section 1866 of the Social Security Act. Section 1866 specifies the terms of provider agreements, the grounds for terminating a provider agreement, the circumstances under which payment for new admissions may be denied, and the circumstances under which payment may be withheld for failure to make timely utilization review. The following other sections of that Act are also pertinent.

(a) Section 1861 defines the services covered under Medicare and the pro-

viders that may be reimbursed for furnishing those services.

(b) Section 1864 provides for the use of State survey agencies to ascertain whether certain entities meet the conditions of participation.

(c) Section 1871 authorizes the Secretary to prescribe regulations for the administration of the Medicare program.

(d) Although section 1866 of the Act speaks only to providers and provider agreements, the effective date rules in this part are made applicable also to the approval of suppliers that meet the requirements specified in § 489.13.

(e) Section 1861(o)(7) of the Act requires each HHA to provide HCFA with a surety bond.

[45 FR 22937, Apr. 4, 1980, as amended at 51 FR 24492, July 3, 1986; 62 FR 43936, Aug. 18, 1997; 63 FR 312, Jan. 5, 1998]

**§ 489.2 Scope of part.**

(a) Subpart A of this part sets forth the basic requirements for submittal and acceptance of a provider agreement under Medicare. Subpart B of this part specifies the basic commitments and limitations that the provider must agree to as part of an agreement to provide services. Subpart C specifies the limitations on allowable charges to beneficiaries for deductibles, coinsurance, copayments, blood, and services that must be part of the provider agreement. Subpart D of this part specifies how incorrect collections are to be handled. Subpart F sets forth the circumstances and procedures for denial of payments for new admissions and for withholding of payment as an alternative to termination of a provider agreement.

(b) The following providers are subject to the provisions of this part:

- (1) Hospitals.
- (2) Skilled nursing facilities (SNFs).
- (3) Home health agencies (HHAs).
- (4) Clinics, rehabilitation agencies, and public health agencies.
- (5) Comprehensive outpatient rehabilitation facilities (CORFs).
- (6) Hospices.
- (7) Critical access hospital (CAHs).
- (8) Community mental health centers (CMHCs).

(c)(1) Clinics, rehabilitation agencies, and public health agencies may enter

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into provider agreements only for furnishing outpatient physical therapy, and speech pathology services.

(2) CMHCs may enter into provider agreements only to furnish partial hospitalization services.

[45 FR 22937, Apr. 4, 1980, as amended at 47 FR 56297, Dec. 15, 1982; 48 FR 56036, Dec. 15, 1983; 51 FR 24492, July 3, 1986; 58 FR 30676, May 26, 1993; 59 FR 6578, Feb. 11, 1994; 62 FR 46037, Aug. 29, 1997]

#### § 489.3 Definitions.

For purposes of this part—

*Immediate jeopardy* means a situation in which the provider's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

*Provider agreement* means an agreement between HCFA and one of the providers specified in § 489.2(b) to provide services to Medicare beneficiaries and to comply with the requirements of section 1866 of the Act.

[48 FR 39837, Sept. 1, 1983, as amended at 51 FR 24492, July 3, 1986; 54 FR 5373, Feb. 2, 1989; 59 FR 56250, Nov. 10, 1994; 60 FR 50119, Sept. 28, 1995]

#### § 489.10 Basic requirements.

(a) Any of the providers specified in § 489.2 may request participation in Medicare. In order to be accepted, it must meet the conditions of participation or requirements (for SNFs) set forth in this section and elsewhere in this chapter.

(b) In order to participate in the Medicare program, the provider must meet the applicable civil rights requirements of:

(1) Title VI of the Civil Rights Act of 1964, as implemented by 45 CFR part 80, which provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity receiving Federal financial assistance (section 601);

(2) Section 504 of the Rehabilitation Act of 1973, as implemented by 45 CFR part 84, which provides that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits

of, or otherwise be subject to discrimination under any program or activity receiving Federal financial assistance;

(3) The Age Discrimination Act of 1975, as implemented by 45 CFR part 90, which is designed to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Age Discrimination Act also permits federally assisted programs and activities, and recipients of Federal funds, to continue to use certain age distinctions, and factors other than age, that meet the requirements of the Age Discrimination Act and 45 CFR part 90; and

(4) Other pertinent requirements of the Office of Civil Rights of HHS.

(c) In order for a hospital, SNF, HHA, or hospice to be accepted, it must also meet the advance directives requirements specified in subpart I of this part.

(d) The State survey agency will ascertain whether the provider meets the conditions of participation or requirements (for SNFs) and make its recommendations to HCFA.

(e) In order for a home health agency to be accepted, it must also meet the surety bond requirements specified in subpart F of this part.

(f) In order for a home health agency to be accepted as a new provider, it must also meet the capitalization requirements specified in subpart B of this part.

[58 FR 61843, Nov. 23, 1993, as amended at 59 FR 6578, Feb. 11, 1994; 63 FR 312, Jan. 5, 1998]

#### § 489.11 Acceptance of a provider as a participant.

(a) *Action by HCFA.* If HCFA determines that the provider meets the requirements, it will send the provider—

(1) Written notice of that determination; and

(2) Two copies of the provider agreement.

(b) *Action by provider.* If the provider wishes to participate, it must return both copies of the agreement, duly signed by an authorized official, to HCFA, together with a written statement indicating whether it has been adjudged insolvent or bankrupt in any State or Federal court, or whether any insolvency or bankruptcy actions are pending.