

BAT EFFLUENT LIMITATIONS—Continued

Stream	Pollutant parameter	BAT effluent limitations
Produced Sand .....	.....	No discharge.
Deck Drainage	Free Oil ³	No discharge.
Domestic Waste	Foam	No discharge.

¹ BAT limitations for dewatering effluent are applicable prospectively, BAT limitations in this rule are not applicable to discharges of dewatering effluent from reserve pits which as of the effective date of this rule no longer receive drilling fluids and drill cuttings. Limitations on such discharges shall be determined by the NPDES permit issuing authority.

² As determined by the static sheen test (see appendix 1 to 40 CFR Part 435, subpart A).

³ As determined by the presence of a film or sheen upon or a discoloration of the surface of the receiving water (visual sheen).

⁴ As determined by the toxicity test (see appendix 2 of 40 CFR Part 435, subpart A).

§ 435.44 [Amended]

17. On page 66128, § 435.44 includes a table of BCT effluent limitations. Footnote 4 on that table should be removed.

18., 19., 20., 21., 22., 23., 24. and 25.

On page 66129, § 435.45 includes a table of NSPS effluent limitations. The table is corrected to read as follows:

§ 435.45 Standards of performance for new sources (NSPS).

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NSPS EFFLUENT LIMITATIONS

Stream	Pollutant parameter	NSPS effluent limitations
Produced Water:		
(A) All coastal areas except Cook Inlet .....	.....	No discharge.
(B) Cook Inlet	Oil & Grease	The maximum for any one day shall not exceed 42 mg/l, and the 30-day average shall not exceed 29 mg/l.
Drilling Fluids, Drill Cuttings, and Dewatering Effluent: ¹		
(A) All coastal areas except Cook Inlet .....	.....	No discharge.
(B) Cook Inlet	Free Oil ²	No discharge.
	Diesel Oil	No discharge.
	Mercury	1 mg/kg dry weight maximum in the stock barite.
	Cadmium	3 mg/kg dry weight maximum in the stock barite.
	Toxicity	Minimum 96-hour LC50 of the SPP shall be 3 percent by volume. ⁴
Well Treatment, Workover and Completion Fluids:		
(A) All coastal areas except Cook Inlet .....	.....	No discharge.
(B) Cook Inlet	Oil & Grease	The maximum for any one day shall not exceed 42 mg/l, and the 30-day average shall not exceed 29 mg/l.
Produced Sand .....	.....	No discharge.
Deck Drainage	Free Oil ³	No discharge.
Sanitary Waste		
Sanitary M10	Residual Chlorine	Minimum of 1 mg/l and maintained as close to this concentration as possible.
Sanitary M9IM	Floating Solids	No discharge.
Domestic Waste	Floating Solids, Garbage and Foam.	No discharge of floating solids or garbage or foam.

¹ NSPS limitations for dewatering effluent are applicable prospectively. NSPS limitations in this rule are not applicable to discharges of dewatering effluent from reserve pits which as of the effective date of this rule no longer receive drilling fluids and drill cuttings. Limitations on such discharges shall be determined by the NPDES permit issuing authority.

² As determined by the static sheen test (see appendix 1 to 40 CFR Part 435, subpart A).

³ As determined by the presence of a film or sheen upon or a discoloration of the surface of the receiving water (visual sheen).

⁴ As determined by the toxicity test (see appendix 2 of 40 CFR Part 435, subpart A).

§ 435.10 [Corrected]

26. On page 66129, the section under subpart G currently reads § 435.10. The section number is corrected to read "§ 435.70".

[FR Doc. 97-413 Filed 1-10-97; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES**Health Care Financing Administration****42 CFR Part 435**

[MB-105-FC]

Medicaid Program; Redeterminations of Medicaid Eligibility Due to Welfare Reform

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Contract with America Advancement Act of 1996 created changes in Federal law affecting the eligibility of large numbers of Medicaid recipients. These changes include revisions to the definition of disability for children and to the eligibility requirements of non-U.S. citizens and individuals receiving disability cash assistance based on a finding of alcoholism and drug addiction.

This final rule with comment period protects Federal financial participation

(FFP) in State Medicaid expenditures for States with unusual volumes of eligibility redeterminations caused by these recent changes in the law. We are making changes to the regulations to provide for additional time for States to process these redeterminations and provide services pending the redeterminations.

DATES: Effective date. These regulations are effective on January 13, 1997.

Comments. Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on March 14, 1997.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: MB-105-FC, P.O. Box 7517, Baltimore, Maryland 21207-0517.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5-09-26, Central Building, 7500 Security Boulevard, Baltimore, Maryland 21244-1850

Office of Information and Regulatory Affairs.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code MB-105-FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone: (202) 690-7890).

FOR FURTHER INFORMATION CONTACT: Bob Tomlinson, (410) 786-4463.

SUPPLEMENTARY INFORMATION:

I. Background

Two recent laws have brought about major changes in the cash assistance programs under title IV-A (Aid to Families with Dependent Children (AFDC)) and title XVI (Supplemental Security Income (SSI)) of the Social Security Act, with substantial implications for Medicaid eligibility. These two laws are: the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193), enacted on August 22, 1996, and the Contract with America

Advancement Act of 1996 (Public Law 104-121), enacted on March 29, 1996. These laws have affected the eligibility of individuals receiving cash payments by replacing the Aid to Families with Dependent Children (AFDC) program with a block grant to States for Temporary Assistance for Needy Families (TANF) and eliminated the automatic linkage between cash assistance to families and children and Medicaid. It replaced the automatic link with special Medicaid eligibility rules primarily based on whether the individuals would have received AFDC benefits under the program in effect on July 16, 1996. These laws also affected the eligibility of children who are receiving disability benefits under SSI, individuals receiving SSI disability benefits based on a finding of alcoholism and drug addiction, and non-U.S. citizens.

In most States, individuals who are eligible for AFDC or SSI are (or were) also automatically eligible for Medicaid. These legislative changes will result in a large number of individuals losing cash assistance eligibility and therefore Medicaid. Under existing regulations at 42 CFR 435.916 and 435.1003, States are required to perform a redetermination of Medicaid eligibility in any case in which an individual loses eligibility based on receipt of cash assistance and that termination affects the individual's eligibility for Medicaid.

The legislative changes have created a substantial new workload for States in the administration of their programs. We estimate that States will have to perform redeterminations on approximately 1.6 million individuals, most of which must occur by July 1, 1997. Considering this volume of redeterminations, we believe that our existing regulations do not allow sufficient time for States to comply with the requirements without risking loss of FFP in their administrative expenditures. Our existing regulations at § 435.916 require that States must "redetermine the eligibility of Medicaid recipients, with respect to circumstances that may change, at least every 12 months * * *." The regulations also require the State to promptly redetermine eligibility when the State agency receives information about changes in a recipient's circumstances that may affect the recipient's eligibility; and, at the appropriate time, when the agency has information about anticipated changes in a recipient's circumstances, such as the loss of SSI payments because the individual has been found ineligible for SSI. This requirement also applies when changes in Federal or State law occur

affecting the Medicaid eligibility of individuals or groups. Regulations at § 435.1003 provide that, with respect to individuals who had been eligible for SSI, FFP is available until the end of the month if the SSI termination notice is received from SSA by the 10th of the month; and until the end of the following month if the SSA notice is received after the 10th of the month. Both regulations require that States determine or redetermine eligibility promptly.

States are required to redetermine the Medicaid eligibility of any recipient who loses eligibility based on receipt of cash assistance. The redetermination must examine whether or not the individual would be Medicaid eligible on any other available basis under the State's approved plan. For example, a person who loses SSI may still be eligible for Medicaid as medically needy, optional categorically needy, or even based on receipt of cash assistance under title IV-A. This policy derives in part from the court decisions in *Stenson v. Blum*, 476 F.Supp., 1331 (S.D.N.Y. 1979) aff'd without opinion, 628 F.2d 1345 (2d Cir. 1980) and *Massachusetts Association of Older Americans v. Sharp* (700 F.2d 749 (1st Cir. 1983). In these cases, the courts ruled that before a State may terminate an individual's Medicaid eligibility, it must redetermine the individual's Medicaid eligibility on any other available basis under the State's approved plan.

Section 435.1003 allows States a limited period of time to perform redeterminations of individuals who have been determined ineligible for SSI in order to be eligible for FFP. The time allowed varies between 20 and 45 days based on the date of receipt of information from SSA about the individual's SSI eligibility.

States have expressed concerns regarding the time required to perform these redeterminations, and thus the implications for potential loss of FFP, given the current regulatory constraints and the complexity of Medicaid eligibility determination and redetermination processes. In situations such as those created by these recent laws, in which States have large redetermination workloads and short timeframes for adjusting the eligibility of affected beneficiaries, they believe that more time is needed. States and HCFA are concerned that retaining the existing time constraints would not allow sufficient time to process such a volume adequately, and would result in sharply increased appeals workloads, and the concomitant delays and expense attendant on such appeals. In some cases, it possibly may result in the

inappropriate loss of Medicaid eligibility and potential harm to the health of recipients. We believe that this approach may also shift the burden of finding a basis for eligibility to the recipient, who may be the least knowledgeable in this area.

II. Provisions of the Final Rule With Comment Period

Under current rules, when changes in Federal law cause a significant change in eligibility for Medicaid and a consequent increase in the eligibility determination/redetermination workload, two equally undesirable results may occur. In an effort to comply with the regulations, States may make inadequate or cursory redeterminations that, in some cases, may result in inappropriate termination of Medicaid eligibility. The affected recipients may be denied medical care or become impoverished attempting to pay for care they do receive. In the alternative, the State may take longer than permitted to make the redetermination and thus risk denial of FFP. In either case, the State risks loss of FFP or incurs increased administrative costs coping with appeals or increased application workloads, while the individual is unnecessarily deprived of the means to pay for needed medical care with attendant adverse consequences.

To promote the proper and efficient administration of the Medicaid program, we believe that when there is a change in Federal law that significantly affects Medicaid eligibility, the Secretary should be able to grant States additional time to redetermine eligibility without risk of loss of FFP and to assure that redeterminations are not performed hastily. We believe the Secretary is best able to determine when additional time and FFP should be granted, because the granting of additional time is intended to be used only when Federal law makes significant changes in Medicaid eligibility requiring voluminous redeterminations of eligibility.

Therefore, we have determined that when changes in Federal law cause sharp increases in State eligibility redetermination workloads, the Secretary should have the flexibility to authorize additional time during which FFP would be available. Such flexibility assures that FFP will be available to meet the redetermination workload while assuring that the time and FFP available are directly proportional to the expected volume of redeterminations arising from the particular legislation.

A grant of additional time would be made only in exceptional circumstances, such as the passage of recent Public Laws 104-193 and 104-

121. This legislation requires a significant volume of redeterminations, estimated at upwards of 1.6 million, most of which must be performed within the next 9 months. It is for this reason that we are providing in this notice that States may take up to 120 days to process all redeterminations of Medicaid eligibility governed by 42 CFR § 435.1003 through the end of calendar year 1997 unless the Secretary further extends the waiver.

The issue of whether more time should be routinely available to States for completing redeterminations will likely be dealt with in a separate regulation at a future date. We are not addressing that issue in this regulation because we do not believe it is an appropriate subject for an emergency regulation.

We considered providing a fixed but longer period of time than that currently provided in § 435.1003. However, such a fixed period would not address the type of extraordinary circumstance, such as welfare reform, which necessitates the changes we are making in this final rule with comment period.

An alternative approach to providing more time, consistent with the theme that a uniform time for redeterminations be used, would be to provide 60 days to redetermine Medicaid eligibility for anyone losing SSI or cash assistance under title IV-A, or in cases where there is a change in circumstances of the recipient. This alternative would include an escape clause similar to one already in existence in § 435.911, which permits States to take longer to make eligibility determinations than the generally specified time period, when extraordinary circumstances prevent adherence to the time standards. Such an escape clause would permit States to take longer when a change in Federal law necessitates large numbers of redeterminations without risking loss of FFP. We did not adopt this option because of concerns that such an open-ended redetermination period would require substantially more monitoring by the Federal Government and recordkeeping by States to ensure that when a State uses the escape clause, the use is justified and the period of time for which it is used is reasonable.

We are adding a new paragraph (c) to § 435.1003 to provide that when a change in Federal law affects the eligibility of large numbers of Medicaid recipients, the Secretary may waive the otherwise applicable FFP requirements and redetermination time limits. This is done to make FFP available for a reasonable period of time, designated by the Secretary, while States redetermine the eligibility of Medicaid recipients.

These recipients may otherwise lose Medicaid eligibility, possibly due to loss of SSI eligibility, because of a change in Federal law. In such situations, the States are given a reasonable period of time, designated by the Secretary, to do the redetermination.

III. Waiver of Proposed Rule and 30-Day Delay in the Effective Date

We ordinarily publish a notice of proposed rulemaking in the Federal Register for a substantive rule to provide a period for public comment. However, we may waive that procedure if we find good cause that notice and comment are impractical, unnecessary, or contrary to the public interest. In addition we also normally provide a delay of 30 days in the effective date. However, if adherence to this procedure would be impractical, unnecessary, or contrary to public interest, we may waive the delay in the effective date.

We are adopting this regulation as a final with comment period without publication of a notice of proposed rule making because of the urgent need to provide the States with FFP in their Medicaid expenditures for additional time for completing the massive number of redeterminations caused by the recent statutory changes. This need is critical because States must begin redetermining eligibility for large numbers of individuals who may lose Medicaid or SSI beginning January 1, 1997. Publication of a proposed rule with a 60-day comment period prior to publication of a final rule would cost valuable time in processing the mandated redeterminations, and would leave large numbers of beneficiaries without Medicaid or SSI beginning January 1, 1997. Thus, we believe that it is contrary to the public interest to delay implementation of the statutory provisions until the process of publishing both proposed and final rules can be completed. Therefore, we find good cause to waive proposed rulemaking and to issue these regulations as final.

Also, because States must begin such redeterminations as of January 1, 1997, we are not making the effective date of the regulation the usual 30 days after publication. Instead, we will make the regulation effective on the date of publication. For the reasons discussed above, we find good cause to waive the usual 30-day delay so that the provisions may take effect upon publication of this final rule with comment period.

Although we are publishing this as a final rule, we are providing a 60-day period for public comment. Because of the large number of items of

correspondence we normally receive concerning regulations, we are not able to acknowledge or respond to the comments individually. However, if we decide that changes are necessary as a result of our consideration of timely comments, we will issue a final rule and respond to the comments in the preamble of that rule.

IV. Regulatory Impact Statement

For final rules with comment period, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless we certify that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of a RFA, individuals and States are not considered to be small entities.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. With the exception of hospitals located in certain rural counties adjacent to urban areas, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We estimate that the costs of performing the redeterminations arising from recent Federal laws will be substantial. We expect that nearly 1,600,000 individuals will have their eligibility redetermined. Of this number, most are SSI-eligible individuals, and of these, 500,000 involve redetermination of disability. We estimate that the cost to the Medicaid program, emanating from Public Laws 104-193 and 104-121, of allowing a longer period of time to make eligibility redeterminations on those individuals who may lose benefits to be approximately \$50 million (Federal share) in FY 1998. This is estimated on the basis of the redeterminations occurring within one year of implementation of this rule and requiring an approximate extra 75 days to complete.

Because these final regulations affect only States and individuals, which are not defined as small entities, we have determined, and we certify, that this rule will not have a significant economic impact under the threshold criteria of the RFA. Further, we certify, for the same reasons, that this final rule does not have a significant impact on the operations of a substantial number

of small rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis or an analysis of the effects of this rule on small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

V. Collection of Information Requirements

This rule does not impose any new information collection or recordkeeping requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The existing collection requirements under § 435.1003 are currently approved under OMB approval number 0938-0247 through May 31, 1997.

Redetermination of eligibility is currently required for all individuals whose eligibility is affected either by change in law or change in individual circumstances. The passage of Public Laws 104-193 and 104-121 requires that SSA redetermine the SSI eligibility of large numbers of recipients. Once SSA issues redetermination notices to the affected individuals, States must redetermine Medicaid eligibility of these individuals. Regulations at § 435.1003 require that such redeterminations be performed promptly. These new rules will not change the redetermination requirement and the associated paperwork needed to perform a redetermination. However, because of the change in Federal law, there will be a substantial increase in the volume of redeterminations States will have to make. These regulations are designed to relieve the States of the pressures and costs of these redeterminations by providing both more time and FFP to conduct the redeterminations and to provide FFP in Medicaid expenditures while the redeterminations are pending.

We estimate that each redetermination will involve approximately 18 hours.

List of Subjects in 42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 435 is amended as follows:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

1. The authority citation for part 435 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 435.1003, the title is revised, and a new paragraph (c) is added to read as follows:

§ 435.1003 FFP for redeterminations.

* * * * *

(c) When a change in Federal law affects the eligibility of substantial numbers of Medicaid recipients, the Secretary may waive the otherwise applicable FFP requirements and redetermination time limits of this section, in order to provide a reasonable time to complete such redeterminations. The Secretary will designate an additional amount of time beyond that allowed under paragraphs (a) and (b) of this section, within which FFP will be available, to perform large numbers of redeterminations arising from a change in Federal law.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: December 10, 1996.

Bruce C. Vladeck,
Administrator, Health Care Financing Administration.

Dated: December 20, 1996.

Donna E. Shalala,
Secretary.

[FR Doc. 97-673 Filed 1-10-97; 8:45 am]

BILLING CODE 4120-01-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-7655]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.