

alpha characters, and followed by the Country Code of two alpha characters "US." This label adheres to the USS-128 Subset A barcode symbology. Only labels printed by the Postal Service may be used on international registered mail.

\* \* \* \* \*

### 385 Recorded Delivery

\* \* \* \* \*

(Amend heading and text of 385.41 to read as follows:)

#### 385.41 General Use

PS Form 8099, Receipt for Recorded Delivery, is used for recorded delivery. Barcodes for recorded delivery labels are printed in USS-128 Subset A. Only labels printed by the Postal Service may be used on recorded delivery mail.

\* \* \* \* \*

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 99-26062 Filed 10-5-99; 8:45 am]

BILLING CODE 7710-12-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### 42 CFR Parts 57 and 58

#### Removal of Health Professions, Nursing, Public Health, and Allied Health Training Grant Program Regulations Under 42 CFR Parts 57 and 58

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of intent.

**SUMMARY:** The Health Resources and Services Administration (HRSA) is publishing notice of its intent to rescind and remove various Public Health Service (PHS) health professions, nursing, public health, and allied health training grant regulations from the Code of Federal Regulations (CFR) at 42 CFR parts 57 and 58. (The student loan program regulations in part 57 will not be removed.)

**FOR FURTHER INFORMATION CONTACT:** Steve Tise, Acting Chief, Planning, Evaluation and Legislation Branch, Office of Research and Planning, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8-67, Rockville, MD 20857; telephone number (301) 443-2381.

**SUPPLEMENTARY INFORMATION:** We are announcing our intent to remove by technical amendment (final rule) some of the Agency's health professions,

nursing, public health, and allied health training grant program regulations under 42 CFR parts 57 and 58 from the Code of Federal Regulations. The statutory authorities of these regulations have been extensively amended since their issuance. Consequently, the regulations no longer reflect the current law.

This action will be announced in the Department's October 1999 Regulatory Plan and the Semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions, published in the **Federal Register**.

Dated: September 23, 1999.

**Claude Earl Fox,**  
*Administrator.*

[FR Doc. 99-25792 Filed 10-5-99; 8:45 am]

BILLING CODE 4160-15-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

#### 42 CFR Part 447

[HCFA-2004-P]

RIN 0938-A170

#### Medicaid Program; Flexibility in Payment Methods for Services of Hospitals, Nursing Facilities, and Intermediate Care Facilities for the Mentally Retarded

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to amend the Medicaid regulations that deal with payment for the services of hospitals and long-term care facilities. It proposes to remove all references to regulations based on the Boren Amendment and to add more flexible rules for States changing rates or payment methodologies for hospitals and long-term care facilities. These revisions will conform the regulations to the Social Security Act, as revised by section 4711 of the Balanced Budget Act of 1997.

**DATES:** Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 6, 1999.

**ADDRESSES:** Department of Health and Human Services, Attention: HCFA-2004-P, P.O. Box 7517, Baltimore, MD 21207-5187

If you prefer, you may deliver an original and 3 copies of your written comments to one of the following addresses:

Room 443-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, or

Room C5-09-26, 7500 Security Boulevard, Baltimore, Maryland.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting please refer to file code HCFA-2004-P. Comments received timely will be available for inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (telephone: (202) 690-7890).

#### FOR FURTHER INFORMATION CONTACT:

Marge Lee, (410) 786-4361.

**SUPPLEMENTARY INFORMATION:** Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954.

Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512-1800 or by faxing to (202) 512-2250. The cost for each copy is \$8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

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### I. Background

#### A. The Boren Amendment

The Social Security Act (the Act) was amended by section 962 of Public Law

96-499 (OBRA '80) and section 2173 of Public Law 97-35 (OBRA '81), known collectively as the Boren amendment, that became effective on October 1, 1980 and October 1, 1981, respectively.

"Boren" required the State agencies to pay hospitals, nursing facilities (NF), and intermediate care facilities for the mentally retarded (ICF/MR), with rates that were " \* \* \* reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable State and Federal laws, regulations, and quality and safety standards \* \* \*". State agencies were required to find, and make assurances satisfactory to the Secretary, that their rates met those requirements and that individuals eligible for medical assistance had reasonable access to inpatient services of adequate quality.

The Balanced Budget Act of 1997 (BBA) repealed the Boren amendment effective October 1, 1997. The Boren amendment still applies to payments for items and services furnished before October 1, 1997; however, we recognize that the intent in repealing the Boren amendment was to reduce our role in the rate-setting process for inpatient hospital and long-term care facility payments and to increase State flexibility in this area. In light of the less restrictive requirements now in place, we are committed to working with State agencies to expedite the resolution of outstanding Boren issues in existing pending amendments.

#### *B. Effects of the Balanced Budget Act of 1997*

The BBA, which became effective on October 1, 1997, repealed sections 1902(a)(13)(A), (13)(B), and (13)(C) of the Act. Many of the Federal requirements related to the State plan amendment process for institutional payment have been eliminated, with the intent of allowing greater State flexibility in setting payment rates. State agencies no longer need to make an annual finding that their payment rates are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated providers. In addition, for State plan amendments involving institutional payment with proposed effective dates of October 1, 1997 and beyond, State agencies are not required to submit assurances and related rate information to us.

Although these requirements were based on the Boren amendment and therefore were eliminated with the Boren amendment repeal, we want to

clarify that certain requirements remain unchanged. All of the regulations in 42 CFR 447.252, 447.257, 447.271, and 447.280 continue to apply to payment rates for inpatient hospital and long-term care services. Other requirements that continue, but are changed due to the new public process requirements, are discussed in the "Provisions of this Proposed Rule" section below.

The Omnibus Budget Reconciliation Act of 1987 (OBRA '87) comprehensively revised the statutory authority that applies to nursing homes participating in Medicaid. This revision, often referred to as Nursing Home Reform, responded to general concern about the quality of nursing home care paid for by the Medicaid and Medicare programs, as well as findings and recommendations of a 1986 Institute of Medicine report. The repeal of the Boren amendment eliminated the requirement that States provide an assurance that, effective October 1, 1990, their rates "take into account the costs of complying with subsections (b) [other than paragraph (3)(F) thereof], (c) and (d) of section 1919 of the Act and provide, in the case of a nursing facility with a waiver under section 1919(b)(4)(C)(ii) of the Act for an appropriate reduction to take into account the lower costs (if any) of the facility for nursing care." However, State agencies are still required to comply with all of the subsections of section 1919 of the Act. The repeal of the Boren amendment has not relieved States of the responsibility of promoting quality of care for their beneficiaries served in nursing homes.

We are concerned about the quality of care in nursing homes and ICFs/MR and continue to seek ways to ensure high quality of care in these settings. Towards that end, we are soliciting comments from consumers and their representatives, providers, and States on including a discussion of how quality of care will be maintained as part of the State agency's justification of the new payment rates.

We want to clarify our position on the public notice requirements in § 447.205. We have reviewed our past position and have concluded that while these requirements still have continuing validity with respect to non-institutional providers, they have diminished relevance to Medicaid institutional payment rates. The public notice requirements in § 447.205 were applied to Boren amendment payment rates because section 1902(a)(13) of the Act did not speak to the process by which State agencies were to adopt payment rates. Since this provision of the statute was silent on this process,

we viewed the public notice requirements as being applicable to this part of the State agency's program. However, with the repeal of the Boren amendment, we now have in section 4711 of the BBA a provision that specifies the process that State agencies are to employ in establishing rates for inpatient hospitals and long-term care facilities. Therefore, with respect to inpatient hospital and long-term care facility payments, the public notice requirements in § 447.205 have been superseded. Accordingly, we propose to make a change to the text at § 447.205(a) to clarify that the requirements in that section no longer apply to institutional payments.

Because we are now clarifying that § 447.205 has applicability only to non-institutional services, we want to be certain that the public realizes that the exceptions that previously would have enabled States to be excused from providing public notice would no longer apply. Thus, the provisions, at paragraph (b), that would excuse a State from compliance with the otherwise applicable public notice requirements when changes are needed to conform payment rates to Medicare methods or levels of reimbursement, or when changes are required by a court order, would have force only with respect to non-institutional services. Because section 4711 requires that States engage in a public process that entails the publication of proposed and final rates, methodologies, and justifications whenever a State wishes to make payment rate changes, it does not seem to account for the kinds of exceptions set out in the current rule nor any other type of exceptions. Accordingly, we are making clear in the rule that the exceptions to public notice set out in § 447.205(b) only would apply to non-institutional payment rates.

We want to clarify the circumstances in which a change in payment rates for inpatient hospital and long-term care facility services would not be subject to the public process requirements set forth in section 4711 of the BBA. If a State agency has a methodology in its State plan that allows for rates to change solely due to the application of an objective indicator such as the CPI, then those rates, that is, the periodic update, the underlying methodologies, and justifications do not need to be published. If, however, rates change for any other reason, including any change in the payment methods and standards, then those rates, methodologies, and justifications need to be published in accordance with the State's public process.

It is our intent to provide substantial flexibility to State agencies in development of a public process that fulfills the requirements and purposes of section 4711 of the BBA. The least burdensome approach to having State agencies assure us that they have in place an acceptable public process is for State agencies to submit a preprint page that becomes a part of the State plan and indicates that the State agency has in place, and uses, a public process which meets the requirements of section 4711 of the BBA. Alternatively, State agencies may indicate elsewhere in the State plan that they have in place, and use, a public process that meets the requirements of section 4711 of the BBA. This information will only need to be submitted to us once, and once approved, will become part of the State plan. During implementation of this provision, we weighed carefully the balance between maximizing State flexibility and maintaining appropriate oversight of Federal Medicaid expenditures. The repeal of the Boren based regulatory provisions through this rule, significantly reduces the burden on State agencies seeking Federal financial participation for institutional services. Previously, each time a State agency chose to amend its methods and standards for institutional payments, the State agency had to include in its amendment, a five page check list indicating its compliance with over a dozen regulatory provisions, as well as provide information on the rate in effect as a result of the amendment. With this regulation, we propose to require State agencies to submit one page each for their inpatient hospital and long term care sections of their State plan. These pages do not contain specific rate information, but rather provide formal assurance to us that the State agency is in compliance with section 4711. Furthermore, the proposed options available to the State agencies in complying with the public process requirements of section 4711 provide State agencies with additional flexibility. State agencies may choose to implement one of three suggested public processes, or create a similar public process that conforms with section 4711.

## II. Provisions of This Proposed Rule

The purpose of this proposed rule is to clarify in the Code of Federal Regulations the increased State flexibility in setting payment rates for inpatient hospital and long-term care services required through section 4711 of the BBA.

We propose to amend § 447.250 by removing the requirement that States

“\* \* \* pay for inpatient hospital and long-term care services through rates that the State finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable State and Federal laws and regulations, and quality and safety standards.” We also propose to add to that same section, language that would require the State agency to develop and use a public process to determine rates and publish proposed and final rates, the underlying methodologies, and justification for the rates, and also to give interested parties a reasonable opportunity for review and comment on the proposed rates, methodologies, and justifications.

The State agency will comply with this provision if it elects to use an administrative process similar to the Federal Administrative Procedures Act, that satisfies the requirements for a public process in developing and inviting comment. This will allow State agencies the flexibility to follow current State public procedures. If a State's public process is not currently being applied to rate setting, or does not currently include a comment period, then the State agency would need to modify the process for purposes of meeting the requirements in this section.

Alternatively, State agencies may elect to use a public process other than their regular administrative procedures. Examples of what we consider to be an acceptable public process include the following:

- Hold one or more public hearings, at which the proposed rates, methodologies, and justifications are described and made available to the public, and time is provided during which comments can be received. Hold one or more additional public hearings, at which the final rates, methodologies, and justifications are described and made available to the public.
- Use a commission or similar process, where meetings are open to members of the public, in the development of proposed and final rates, methodologies, and justifications.
- Include notice of the intent to submit a State plan amendment in newspapers of general circulation, and provide a mechanism for members of the public to receive a copy of the proposed and final rates, methodologies, and justifications underlying the amendment, and an opportunity, which shall not be less

than 30 days prior to the proposed effective date, to comment on the proposed rates, methodologies, and justifications.

- Include any other similar process for public input that would afford an interested party a reasonable opportunity to learn about the proposed and final rates, methodologies, and justifications, and to comment on the proposed rates, methodologies, and justifications.

State agencies will be required to indicate in the State plan that they have in place a public process that meets the requirements of section 1902(a)(13)(A) of the Act. This information need only be submitted once, and States may use the preprint page that we provide, which makes this statement, or include the language from the preprint page in their State plan at an appropriate location. In the case of hospitals, these rates must take into account the situation of hospitals that serve a disproportionate number of low income patients with special needs.

While the intent in repealing the Boren amendment was to permit States maximum flexibility in the rates they establish for institutional services, section 4711 of the BBA is intended to assure that the processes established by the State agency for setting those rates will be conducted in a public manner, with meaningful opportunities for public input. Therefore, we are adding to § 447.251, for purposes of this subpart, a definition of the word “published.” We interpret the word “published” to mean “at least, produced and made available in hard copy and, if possible, electronically, such that any interested party may readily obtain a copy of the proposed and final rates, the underlying methodologies, and justifications.” We feel that a definition which provides specific guidance on what we consider acceptable forms of publication of rates, the methodologies underlying the rates, and the justifications is fairer and more workable than the course we initially recommended after the enactment of the BBA. We recognize that this definition of “published” differs from the guidance we sent to State agencies in our letter of December 10, 1997 regarding the repeal of the Boren amendment. In that letter, we indicated that “published” means “made public”, without requiring State agencies to issue an actual written publication to meet the new public process requirements. However, we specifically want to solicit public comment on this proposed change in the definition of “published”.

We are removing §§ 447.253 and 447.255 from the text. The requirements contained in these sections are no longer applicable to the setting of institutional rates.

We are adding a new § 447.254 to address the new public process that the State agencies must have in place to satisfy the requirements of the BBA. In § 447.254(a) we describe the steps in the public process, indicating that proposed rates, methodologies underlying the establishment of such rates and the justifications for the rates must be published prior to the proposed effective date, giving a reasonable opportunity for review and comment. State agencies may elect to apply the notice periods specified in their State general administrative procedures acts. The final rates and the associated methodologies and justifications must also be published, but may be published following the effective date.

In § 447.254(b) we explain that State agencies must indicate to us that they have in place a public process that meets the requirements of § 447.254(a). This language is to be submitted to us only one time for approval. Once approved, the language will become a part of the State plan.

In § 447.256, we have removed the reference to repealed § 447.253 and replaced it with a reference to the new § 447.254.

In § 447.272, we have removed the reference to repealed § 447.253(B)(1)(ii)(A) and replaced it with a reference to section 1902(a)(13)(A)(iv) of the Act.

### III. Response to Comments

Because of the large number of items of correspondence we normally receive in response to **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the "COMMENT DATE" section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

### IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection

should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each information collection requirement discussed below.

#### *Section 447.252 State Plan Requirements*

Section 447.252(b) states that the State plan must specify comprehensively the methods and standards used by the State agency to set payment rates in a manner consistent with § 430.10. This section requires State agencies to maintain in their State plan a current description of their payment methods and standards for institutional services. State agencies generally amend their State plans between one and five times during the fiscal year through State plan amendments submitted to us for review and approval.

#### *Section 447.254 Public Process Requirements*

Section 447.254(b) requires that the State agency report to us that it has in place a public process for determination of payment rates under the plan for hospital services and long-term care facility services.

This information is submitted by State agencies on a one-time basis for the hospital payment section of the Medicaid State plan and a one-time basis for the long-term care payment section of the Medicaid State plan. It requires the submission of a single sentence in each instance. State agencies have the option of signing a preprinted statement or they may copy the statement into their plan and initialize the page with the statement. Once approved, this statement will become part of the State plan. Our best estimate is that it will take  $\frac{1}{4}$  hour or less for a State agency to submit each statement. At two per State (one each for the hospital payment and long-term care payment sections of the Medicaid State plan), that would result in  $\frac{1}{2}$  hour for each of 54 States, or approximately 27 hours total.

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirement described above. This requirement is not effective until it has been approved by OMB.

If you comment on this information collection, please mail copies directly to the following:

Health Care Financing Administration,  
Office of Information Services,  
Security and Standards Group,  
Division of HCFA Enterprise  
Standards Room N2-14-26, 7500  
Security Boulevard, Baltimore, MD  
21244-1850. Attention: Julie Brown,  
HCFA-2004-P, and

Office of Information and Regulatory  
Affairs, Office of Management and  
Budget, Room 10235, New Executive  
Office building, Washington, DC  
20503 Attn: Allison Eydt, HCFA Desk  
Officer.

### V. Regulatory Impact Statement

We have examined the impacts of this proposed rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96-354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, non-profit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by non-profit status or by having revenues of \$5 million or less annually. For purposes of the RFA, all hospitals and long-term care facilities are considered to be small entities. Individuals and States are not included in the definition of a small entity.

Section 1102(b) of the Act, requires us to prepare a regulatory impact analysis if a rule 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 603 of the RFA. 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 following savings are attributable to the repeal of the Boren amendment.

[Amounts in Millions]

	FY1999	FY2000	FY2001	FY2002	FY2003
Federal .....	35	75	115	160	205
State .....	30	55	90	120	155
Total .....	65	130	205	280	360

These savings have been included in the Medicaid baseline spending projections for the President's FY 1999 budget.

The repeal of the Borden Amendment, by the Balanced Budget Act of 1997, is the reason for the estimated savings. The only regulatory requirement imposed on the States, by this rule, deals with the public notice process, which is unlikely to have any impact.

Nevertheless, although the savings described above are directly attributed to the statutory change, and not to any rule placed on states in conjunction with the statute, this proposed regulation is economically significant and will have an impact of more than \$100 million starting in FY 2000.

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

## VI. Anticipated Effects

In December of 1997, we issued written guidance to State agencies informing them of the options available to them in complying with the new statute. We provided a model preprint page that State agencies may use in order to indicate to us that they have in place, and use a public process which complies with the new statute. Over 80% of the State agencies have voluntarily complied with our guidance, having implemented rates established under the State's new public process.

We have reviewed this proposed rule under the threshold criteria of Executive order 13132, Federalism. We have determined that it significantly affects the rights, roles and responsibilities of States.

### List of Subjects in 42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR chapter IV would be amended as follows:

## PART 447—PAYMENTS FOR SERVICES

1. The authority citation for part 447 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. In § 447.205 B, the section heading and paragraph (a) are revised to read as follows:

### § 447.205 Public notice of changes in Statewide methods and standards for setting payment rates for non-institutional services.

(a) *When notice is required.* Except as specified in paragraph (b) of this section, the agency must provide public notice of any significant proposed change in its methods and standards for setting payment rates for non-institutional services.

30. Section § 447.250 is revised to read as follows:

### § 447.250 Basis and purpose.

(a) This subpart implements section 1902(a)(13)(A) of the Act, which requires States to use a public process for determining rates; publish proposed and final rates, the methodologies underlying the rates, and the justifications for the rates; and give interested parties a reasonable opportunity for review and comment on the proposed rates, methodologies, and justifications. In the case of hospitals, such rates must take into account the situation of hospitals that serve a disproportionate number of low-income patients with special needs.

(b) Section 447.272(a)(2) implements section 1902(a)(30) of the Act, which requires that payments be consistent with efficiency, economy, and quality of care.

(c) Section 447.271 implements section 1903(i)(3) of the Act, which requires that payments for inpatient hospital services not exceed the hospital's customary charges.

(d) Section 447.280 implements section 1913(b) of the Act, which concerns payment for long-term care services furnished by swing-bed hospitals.

4. Section § 447.251 is revised to read as follows:

### § 447.251 Definitions.

For the purposes of this subpart—  
*Long-term care facility services* means intermediate care facility services for the mentally retarded (ICF/MR) and nursing facility (NF) services.

*Provider* means an institution that furnishes inpatient hospital services or an institution that furnishes long-term care facility services.

*Published* means, at least, produced and made available in hard copy and, if possible, electronically, such that any interested party may readily obtain a copy of the proposed and final rates, the underlying methodologies, and justifications.

5. Section 447.252 is republished to read as follows:

### § 447.252 State plan requirements.

(a) The plan must provide that the requirements of this subpart are met.

(b) The plan must specify comprehensively the methods and standards used by the agency to set payment rates in a manner consistent with § 430.10 of this chapter.

(c) If the agency chooses to apply the cost limits established under Medicare (see § 413.30 of this chapter) on an individual provider basis, the plan must specify this requirement.

### § 447.253 [Removed and Reserved]

6. Section 447.253 is removed and reserved.

7. Section 447.254 is added to read as follows:

### § 447.254 Public process requirements.

(a) *Steps in the process.* The Agency must have in place, and use, a public process for determination of rates of payment under the plan for hospital services and long-term care facility services under which proposed and final rates, the methodologies underlying the establishment of such rates, and justifications for the rates are published. The public process must give providers, beneficiaries and their representatives, and other concerned State residents a reasonable opportunity for review and comment on the proposed rates, methodologies, and justifications prior to the proposed effective date. The final rates, methodologies and justifications may be published after the proposed effective date of the rates. Further, in the case of hospitals, such rates must take into account (in a manner consistent with section 1923 of the Act) the situation of hospitals that serve a disproportionate

number of low-income patients with special needs.

(b) *Report to HCFA.* The State agency must indicate to HCFA that it has in place a public process that meets the requirements of paragraph (a) of this section. This language is to be submitted to HCFA only one time for approval. Once approved, the language will become a part of the State plan.

**§ 447.255 [Removed and Reserved]**

8. Section 447.255 is removed and reserved.

9. Section 447.256 is revised to read as follows:

**§ 447.256 Procedures for HCFA action on State plan amendments.**

(a) *Criteria for approval.* (1) HCFA approval action on State plans and State plan amendments is taken in accordance with subpart B of part 430 of this chapter and sections 1116, 1902(b) and 1915(f) of the Act.

(2) In the case of State plan and plan amendment changes in payment methods and standards, HCFA bases its approval on the Medicaid agency's satisfaction of the requirements of § 447.254 as well as the other requirements of this subpart.

(b) *Time limit.* HCFA sends a notice to the agency of its determination as to whether the State plan amendment is acceptable within 90 days of the date HCFA receives the State plan amendment. If HCFA does not send a notice to the agency of its determination within this time limit and the provisions in paragraph (a) of this section are met, the State plan amendment will be deemed accepted and approved.

(c) *Effective date.* A State plan amendment that is approved becomes effective not earlier than the first day of the calendar quarter in which an approvable amendment is submitted in accordance with § 430.20 of this chapter.

10. Section 447.257 is republished to read as follows:

**§ 447.257 FFP: Conditions relating to institutional reimbursement.**

FFP is not available for a State's expenditures for hospital inpatient or long-term care facility services that are in excess of the amounts allowable under this subpart.

11. Section 447.271 is republished to read as follows:

**§ 447.271 Upper limits based on customary charges.**

(a) Except as provided in paragraph (b) of this section, the agency may not pay a provider more for inpatient hospital services under Medicaid than

the provider's customary charges to the general public for the services.

(b) The agency may pay a public provider that provides services free or at a nominal charge at the same rate that would be used if the provider's charges were equal to or greater than its costs.

12. In § 447.272, paragraph (c) is revised to read as follows:

**§ 447.272 Application of upper payment limits.**

\* \* \* \* \*

(c) *Disproportionate share.* The upper payment limitation established under paragraphs (a) and (b) of this section does not apply to payment adjustments made under a State plan to hospitals found to serve a disproportionate number of low-income patients with special needs as provided in section 1902(a)(13)(A)(iv) of the Act. Disproportionate share hospital payments shall be subject to the following limits:

(1) The aggregate DSH limit using the Federal share of the disproportionate share hospital limits under section 1923(f) of the Act;

(2) The hospital-specific DSH limits in section 1923(g) of the Act; and

(3) The aggregate DSH limit for institutions for mental disease (IMDs) under section 1923(h) of the Act.

13. Section 447.280 is republished to read as follows:

**§ 447.280 Hospital providers of NF services (swing-bed hospitals).**

(a) *General rule.* If the State plan provides for NF services furnished by a swing-bed hospital, as specified in §§ 440.40(a) and 440.150(f) of this chapter, the methods and standards used to determine payment rates for routine NF services must—

(1) Provide for payment at the average rate per patient day paid to NFs, as applicable for routine services furnished during the previous calendar year; or

(2) Meet the State plan and payment requirements described in this subpart, as applicable.

(b) *Application of the rule.* The payment methodology used by a State to set payment rates for routine NF services must apply to all swing-bed hospitals in the State.

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

Dated: April 1, 1999.

**Nancy Ann Min DeParle,**

*Administrator, Health Care Financing Administration.*

Approved: May 25, 1999.

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 99-25788 Filed 10-5-99; 8:45 am]

BILLING CODE 4120-01-P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[DA 99-2025, MM Docket No. 99-297, RM-9726]

**Digital Television Broadcast Service; Oklahoma City, OK**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Ohio/Oklahoma Hearst-Argyle Television, Inc., permittee of station KOCO-TV, NTSC Channel 5, Oklahoma City, Oklahoma, proposing the substitution of DTV Channel 7 for station KOCO-TV's assigned DTV Channel 16. DTV Channel 7 can be substituted and allotted to Oklahoma City, Oklahoma, as proposed, in compliance within the principle community requirements of Section 73.625(a) at coordinates 35-33-45 N. and 97-29-24 W. DTV Channel 7 can be allotted to Oklahoma City with a power of 45.0 (kW) and a height above average terrain (HAAT) of 446 meters.

**DATES:** Comments must be filed on or before November 26, 1999, and reply comments on or before December 13, 1999.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark J. Prak, Esq., Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., Post Office Box 1800, Raleigh, North Carolina 27602 (Counsel for Ohio/Oklahoma Hearst-Argyle Television, Inc.).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99-297, adopted September 30, 1999, and released October 4, 1999. The full