

Allowing States to request waivers will also provide States with increased control over their individual TPL programs.

We have determined, and the Secretary certifies, that this final rule is not a significant regulatory action and will not have a significant economic impact on a substantial number of small entities. Also, this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we have not prepared a regulatory impact analysis, a small rural hospital analysis, or an initial regulatory flexibility analysis.

In accordance with the provisions of the Executive Order of 12866, this final regulation was not reviewed by the Office of Management and Budget.

## VI. Paperwork Reduction Act

Sections 433.138(l) and 433.139(e) of this final rule contain new information collection requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C 3504, et seq.). Reporting burden for the collection of information in §§ 433.138(1) and 433.139(e) is estimated to be 8 hours per request for waiver.

### List of Subjects in 42 CFR Part 433

Administrative practice and procedure, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

42 CFR part 433 is amended as follows:

### PART 433—STATE FISCAL ADMINISTRATION

1. The authority citation for part 433 continues to read as follows:

**Authority:** Secs. 1102, 1137, 1902(a)(4), 1902(a)(25), 1902(a)(45), 1903(a)(3), 1903(d)(2), 1902(d)(5), 1903(o), 1903(p), 1903(r), and 1912 of the Social Security Act (42 U.S.C. 1302, 1320b-7, 1396a(a)(4), 1396a(a)(25), 1396a(a)(45), 1396b(a)(3), 1396b(d)(2), 1396a(d)(5), 1396b(o), 1396b(p), 1396b(r), and 1396k, unless otherwise noted.

2. Section 433.137(a) is revised to read as follows:

#### § 433.137 State plan requirements.

(a) A State plan must provide that the requirements of §§ 433.138 and 433.139 are met for identifying third parties liable for payment of services under the plan and for payment of claims involving third parties.

\* \* \* \* \*

3. Section 433.138 is amended by revising the section title, paragraphs (a)

and (c), the introductory text of paragraph (d), and paragraphs (e), (f), and (j); by adding undesignated introductory language to paragraph (g); and by adding a new paragraph (l) to read as follows:

#### § 433.138 Identifying liable third parties.

(a) *Basic provisions.* The agency must take reasonable measures to determine the legal liability of the third parties who are liable to pay for services furnished under the plan. At a minimum, such measures must include the requirements specified in paragraphs (b) through (k) of this section, unless waived under paragraph (l) of this section.

\* \* \* \* \*

(c) *Obtaining other information.* Except as provided in paragraph (l) of this section, the agency must, for the purpose of implementing the requirements in paragraphs (d)(1)(ii) and (d)(4)(i) of this section, incorporate into the eligibility case file the names and SSNs of absent or custodial parents of Medicaid recipients to the extent such information is available.

(d) *Exchange of data.* Except as provided in paragraph (l) of this section, to obtain and use information for the purpose of determining the legal liability of the third parties so that the agency may process claims under the third party liability payment procedures specified in § 433.139(b) through (f), the agency must take the following actions:

\* \* \* \* \*

(e) *Diagnosis and trauma code edits.*

(1) Except as specified under paragraph (e)(2) or (l) of this section, or both, the agency must take action to identify those paid claims for Medicaid recipients that contain diagnosis codes 800 through 999 International Classification of Disease, 9th Revision, Clinical Modification, Volume 1 (ICD-9-CM) inclusive, for the purpose of determining the legal liability of third parties so that the agency may process claims under the third party liability payment procedures specified in § 433.139(b) through (f).

(2) The agency may exclude code 994.6, Motion Sickness, from the edits required under paragraph (e)(1) of this section.

(f) *Data exchanges and trauma code edits: Frequency.* Except as provided in paragraph (l) of this section, the agency must conduct the data exchanges required in paragraphs (d)(1) and (d)(3) of this section in accordance with the intervals specified in § 435.948 of this chapter, and diagnosis and trauma edits required in paragraphs (d)(4) and (e) of this section on a routine and timely

basis. The State plan must specify the frequency of these activities.

(g) *Follow-up procedures for identifying legally liable third party resources.* Except as provided in paragraph (l) of this section, the State must meet the requirements of this paragraph.

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(j) *Reports.* The agency must provide such reports with respect to the data exchanges and trauma code edits set forth in paragraphs (d)(1) through (d)(4) and paragraph (e) of this section, respectively, as the Secretary prescribes for the purpose of determining compliance under § 433.138 and evaluating the effectiveness of the third party liability identification system. However, if the State is not meeting the provisions of paragraph (e) of this section because it has been granted a waiver of those provisions under paragraph (l) of this section, it is not required to provide the reports required in this paragraph.

\* \* \* \* \*

(l) *Waiver of requirements.* (1) The agency may request initial and continuing waiver of the requirements to determine third party liability found in paragraphs (c), (d)(4), (d)(5), (e), (f), (g)(1), (g)(2), (g)(3), and (g)(4) of this section if the State determines the activity to be not cost-effective. An activity would not be cost-effective if the cost of the required activity exceeds the third party liability recoupment and the required activity accomplishes, at the same or at a higher cost, the same objective as another activity that is being performed by the State.

(i) The agency must submit a request for waiver of the requirement in writing to the HCFA regional office.

(ii) The request must contain adequate documentation to establish that to meet a requirement specified by the agency is not cost-effective. Examples of documentation are claims recovery data and a State analysis documenting a cost-effective alternative that accomplished the same task.

(iii) The agency must agree, if a waiver is granted, to notify HCFA of any event that occurs that changes the conditions upon which the waiver was approved.

(2) HCFA will review a State's request to have a requirement specified under paragraph (l)(1) of this section waived and will request additional information from the State, if necessary. HCFA will notify the State of its approval or disapproval determination within 30 days of receipt of a properly documented request.

(3) HCFA may rescind a waiver at any time that it determines that the agency