or first assistant duties, these services will be covered under Medicaid.

Comment: One commenter stated that additional amendments to § 440.165(b)(4) are necessary to reflect actual statutes and regulations relating to licensure in the various States. Specifically, the commenter proposed that § 440.165(b)(4) (i) and (ii) be revised to indicate current certification of nursemidwives by the American College of Nurse-Midwives (ACNM) Certification Council, Inc. Since 1991, the certification function has been conducted by the ACNM Certification Council (ACC), a corporation separate from the ACNM which was created to handle certification functions separately from the membership structure and other functions of the ACNM.

Response: We agree with the commenter and will revise section 440.165(b)(4) (i) and (ii) by adding "or by the ACNM Certification Council, Inc. (ÅCC)." This revision will recognize the current certification of nurse-midwives by the ACC.

Comment: One commenter suggested that if for any reason the definition of "maternity cycle" must be retained, it should be amended to reflect the generally recognized postpartum period as 6 weeks rather than 60 days.

Response: The definition of maternity cycle at §440.165(c), which included the statutory Medicaid definition of the postpartum period, is not retained in this regulation because OBRA '93 deleted the maternity cycle definition from section 1905(a)(17) of the Act. Nurse-midwife services are no longer limited by the "during the maternity cycle" requirement.

IV. Provisions of the Final Rule

In this final rule we are adopting the provisions as proposed with one addition. Specifically, in response to a public comment, we are revising § 440.165(b)(4) (i) and (ii) to include the American College of Nurse-Midwives Certification Council as an organization that may certify nurse-midwives.

V. Impact Statement

We generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all providers and suppliers of health care and services for Medicaid recipients to be small entities. Individuals and States are not included in the definition of a small entity.

Also, section 1102(b) of the Act requires the Secretary 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 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 a Metropolitan Statistical Area and has fewer than 50 beds.

We have determined, and the Secretary certifies, that these final regulations will not have a significant impact on a substantial number of small entities and will not have a significant impact on the operation of a substantial number of small rural hospitals. Therefore we have not prepared a regulatory flexibility analysis or an analysis of the effect on small rural hospitals.

Cost savings will occur regardless of the promulgation of these regulations. The provisions of this rule merely conform the regulations to the legislative provisions of OBRA '93. In accordance with the provisions of Executive Order 12866, this final rule was not reviewed by the Office of Management and Budget.

VI. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 42 CFR Part 440

Grant programs-health, Medicaid.

42 CFR part 440 would be amended as set forth below:

PART 440—SERVICES: GENERAL PROVISIONS

1. The authority citation for part 440 continues to read as follows:

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

2. In §440.10 the introductory text of paragraph (a) is republished, paragraph (a)(2) is revised, the introductory text of paragraph (a)(3) is republished, and paragraph (a)(3)(iii) is revised to read as follows:

§ 440.10 Inpatient hospital services, other than services in an institution for mental diseases.

(a) Inpatient hospital services means services that—

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(2) Are furnished under the direction of a physician or dentist; and

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(3) Are furnished in an institution that— *

(iii) Meets the requirements for participation in Medicare as a hospital; and

3. In §440.20 the introductory text to paragraph (a) is republished, paragraph (a)(2) is revised, the introductory text of paragraph (a)(3) is republished and paragraph (a)(3)(ii) is revised to read as follows:

§ 440.20 Outpatient hospital services and rural health clinic services.

(a) Outpatient hospital services means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that-

* (2) Are furnished by or under the direction of a physician or dentist; and * * (3) Are furnished by an institution

that-

(ii) Meets the requirements for participation in Medicare as a hospital; and

4. Section 440.90 is amended by removing paragraph (c).

5. In §440.165, the introductory text of paragraph (a) is republished, paragraph (a)(1) is removed, paragraphs (a)(2) and (a)(3) are redesignated paragraphs (a)(1) and (a)(2) respectively and republished, the introductory text of paragraph (b) is republished, paragraphs (b)(4)(i) and (b)(4)(ii) are revised and paragraph (c) is removed. The revisions are to read as follows:

§ 440.165 Nurse-midwife services.

(a) Nurse-midwife services means services that-

(1) Are furnished by a nurse-midwife within the scope of practice authorized by State law or regulation, and in the case of inpatient or outpatient hospital services or clinic services, are furnished by or under the direction of a nursemidwife to the extent permitted by the facility; and

(2) Unless required by State law or regulation or a facility, are paid without regard to whether the nurse-midwife is under the supervision of, or associated