and unpaid assessments that are discovered when the surety bond is in effect, regardless of when the payment, overpayment, or other event giving rise to the claim, civil money penalty, or assessment occurred, provided CMS makes a written demand for payment from the Surety during, or within 90 days after, the term of the bond.

(2) If the HHA fails to furnish a bond meeting the requirements of this subpart F for the year following expiration of the term of an annual bond, or if the HHA fails to submit a rider when a rider is required to be submitted under this subpart, or if the HHA’s provider agreement is terminated, the last bond or rider, as applicable, submitted by the HHA to CMS, which bond or applicable rider meets the requirements of this subpart, remains effective and the Surety remains liable for unpaid claims, civil money penalties, and assessments that—
   (i) CMS determines or imposes on or asserts against the HHA based on overpayments or other events that took place during or prior to the term of the last bond or rider; and
   (ii) Were determined or imposed during the 2 years following the date the HHA failed to submit a bond or required rider or the date the HHA’s provider agreement is terminated, whichever is later.

(c) The bond must provide that the Surety’s liability to CMS under the bond is not extinguished by any action of the HHA, the Surety, or CMS, including but not necessarily limited to any of the following actions:
   (1) Action by the HHA or the Surety to terminate or limit the scope or term of the bond. The Surety’s liability may be extinguished, however, when—
      (i) The Surety furnishes CMS with notice of such action not later than 10 days after receiving notice from the HHA of action by the HHA to terminate or limit the scope of the bond, or not later than 60 days before the effective date of such action by the Surety; or
      (ii) The HHA furnishes CMS with a new bond that meets the requirements of this subpart.
   (2) The Surety’s failure to continue to meet the requirements of §489.64(a) or CMS’s determination that the surety company is an unauthorized Surety under §489.64(b).
   (3) Termination of the HHA’s provider agreement.
   (4) Any action by CMS to suspend, offset, or otherwise recover payments to the HHA.
   (5) Any action by the HHA to—
      (i) Cease operation;
      (ii) Sell or transfer any asset or ownership interest;
      (iii) File for bankruptcy; or
      (iv) Fail to pay the Surety.

(6) Any fraud, misrepresentation, or negligence by the HHA in obtaining the surety bond or by the Surety (or by the Surety’s agent, if any) in issuing the surety bond, except that any fraud, misrepresentation, or negligence by the HHA in identifying to the Surety (or to the Surety’s agent) the amount of Medicare payments upon which the amount of the surety bond is determined will not cause the Surety’s liability to CMS to exceed the amount of the bond.

(7) The HHA’s failure to exercise available appeal rights under Medicare or to assign such rights to the Surety.

(d) The bond must provide that actions under the bond may be brought by CMS or by CMS’s fiscal intermediaries.

(e) The bond must provide the Surety’s name, street address or post office box number, city, state, and zipcode to which the CMS notice provided for in paragraph (a) of this section is to be sent.

[63 FR 313, Jan. 5, 1998, as amended at 63 FR 29655, June 1, 1998]

§ 489.67 Term and type of bond.

(a) Each participating HHA that does not meet the criteria for waiver under §489.62 must submit to CMS in a form as CMS may specify, a surety bond for a term beginning January 1, 1998. If an annual bond is submitted for the initial term, it must be effective through the end of the HHA’s current fiscal year.

(b) Type of bond. The type of bond required to be submitted by an HHA under this subpart may be either—
   (1) An annual bond (that is, a bond that specifies an effective annual period corresponding to the HHA’s fiscal year); or
§ 489.68 Effect of failure to obtain, maintain, and timely file a surety bond.

(a) The failure of a participating HHA to obtain, file timely, and maintain a surety bond in accordance with this subpart F and CMS’s instructions is sufficient under §489.53(a)(1) for CMS to terminate the HHA’s provider agreement.

(b) The failure of an HHA seeking to become a participating HHA to obtain and file timely a surety bond in accordance with this Subpart F and CMS’s instructions is sufficient under §489.12(a)(3) for CMS to refuse to enter into a provider agreement with the HHA.

§ 489.69 Evidence of compliance.

(a) CMS may at any time require an HHA to make a specific showing of being in compliance with the requirements of this Subpart F and may require the HHA to submit such additional evidence as CMS considers sufficient to demonstrate the HHA’s compliance.

(b) If requested by CMS to do so, the failure of an HHA to timely furnish sufficient evidence to CMS to demonstrate compliance with the requirements of this Subpart F is sufficient for CMS to terminate the HHA’s provider agreement under §489.53(a)(1) or to refuse to enter into a provider agreement with the HHA under §489.12(a)(3), as applicable.

§ 489.70 Effect of payment by the Surety.

A Surety’s payment to CMS under a bond for an unpaid claim or an unpaid civil money penalty or assessment, constitutes—

(a) Collection of the unpaid claim or unpaid civil money penalty or assessment (to the extent the Surety’s payment on the bond covers such unpaid claim, civil money penalty, or assessment); and