EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 26, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.431 is amended by removing the entries for ''sugar beet roots'' and ''sugar beet tops'' and alphabetically adding commodities to the table in paragraph (a) to read as follows:

§ 180.431 Clopyralid; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Barley, forage	9.0
* * * * *	
Barley, milled fractions (except flour)	12
* * * * *	
Beet, sugar, molasses	10
Beet, sugar, roots	2.0
Beet, sugar, tops	3.0
* * * * *	
Oats, milled fractions (except flour)	12
* * * * *	
Wheat, milled fractions (except flour)	12

* * * * *

[FR Doc. 01–745 Filed 1–10–01; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 435

[HCFA–2086–F]

RIN 0938–AJ96

Medicaid Program; Change in Application of Federal Financial Participation Limits

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

ACTION: Final rule.

SUMMARY: This final rule changes the current requirement that limits on Federal Financial Participation (FFP) must be applied before States use less restrictive income methodologies than those used by related cash assistance programs in determining eligibility for Medicaid. This change was originally published as a proposed rule on October 31, 2000 (65 FR 64919).

This regulatory change is necessary because the current regulatory interpretation of how the FFP limits apply to income methodologies under section 1902(r)(2) of the Social Security Act (the Act) unnecessarily restricts States' ability to take advantage of the authority to use less restrictive income methodologies under that section of the statute. While the enactment of section 1902(r)(2) of the Act could be read in the limited manner embodied in current regulations the statute does not require such a reading, and subsequent State experience with implementing section 1902(r)(2)of the Act calls into question the current regulation's approach.

EFFECTIVE DATE: These regulations are effective on March 12, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Trudel, (410) 786–3417.

SUPPLEMENTARY INFORMATION: Generally, in determining financial eligibility of individuals for the Medicaid program, State agencies must apply the financial methodologies and requirements of the cash assistance program that is most closely categorically related to the individual's status. Our regulations at 42 CFR 435.601 set forth the requirements for State agencies applying less restrictive income and resource methodologies when determining Medicaid eligibility under the authority of section 1902(r)(2) of the Social Security Act (the Act). Current regulations at 42 CFR 435.1007 provide that when States use less restrictive income and resource methodologies under section 1902(r)(2), the limits on Federal Financial Participation (FFP) in section 1903(f) of the Act apply before application of any less restrictive income methodologies. We are amending that regulation to change this requirement so that the 133⅓ percent FFP limit contained in section 1903(f)(1) of the Social Security Act would apply after application of any less restrictive income methodologies under section 1902(r)(2) of the Act.

The adoption of this policy gives States additional flexibility in setting Medicaid eligibility requirements. Also, we believe adoption of this policy reflects the intent of Congress to move the Medicaid program away from cash assistance program rules, as evidenced by enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which severed the link between the Aid to Families with Dependent Children (AFDC) program and Medicaid.

I. Background

Section 2373(c) of the Deficit Reduction Act of 1984 (DRA) established a moratorium period beginning on October 1, 1981, during which the Secretary was prohibited from taking any compliance, disallowance, penalty, or other regulatory action against a State because a State's Medicaid plan included a standard or methodology for determining financial eligibility for the medically needy that the Secretary determined was less restrictive than the

standard or methodology required under the related cash assistance program.

The provisions of the DRA moratorium were clarified by section 9 of the Medicare and Medicaid Patient Program Protection Act of 1987. Section 9 amended section 2373(c) of DRA to specify that the moratorium applied to the Secretary's compliance, disallowance, penalty, or other regulatory actions against a State because the State plan is determined to be in violation of provisions of the Act for coverage, as optional categorically needy, of certain aged, blind, and disabled individuals who were in institutions or receiving home and community-based services, as well as methodologies for determining financial eligibility of the medically needy.

The moratorium applied to an amendment or other changes in Medicaid State plans, or operation or program manuals, regardless of whether the Secretary had approved, disapproved, acted upon, or not acted upon the amendment or other change, or operation or program manual.

Authority to adopt less restrictive financial methodologies as part of a State's Medicaid plan was added to the law in 1988. Section 303(e) of the Medicare Catastrophic Coverage Act of 1988, enacted on July 1, 1988 (and amended by section 608(d)(16)(C) of the Family Support Act of 1988), amended the Act to permit States to use less restrictive financial methodologies in determining eligibility not only for the medically needy eligibility group at section 1902(a)(10)(C) of the Act, but also for specified categorically needy groups of individuals. These categorically needy groups include qualified pregnant women and children (section 1902(a)(10)(A)(i)(III) of the Act), poverty level pregnant women and infants (section 1902(a)(10)(A)(i)(IV) of the Act), qualified Medicare beneficiaries (section 1905(p) of the Act), all of the optional categorically needy groups specified in section 1902(a)(10)(A)(ii) of the Act, and individuals in States that have elected, under section 1902(f) of the Act, to apply more restrictive eligibility criteria than are used by the Supplemental Security Income (SSI) program. This provision of the Medicare Catastrophic Coverage Act was effective for medical assistance furnished on or after October 1, 1982. This authority was codified in a new section 1902(r)(2) of the Act.

The application of FFP limits prior to the use of more liberal income methodologies under section 1902(r)(2) of the Act was based on the Senate Report accompanying the 1987 amendment to the DRA moratorium (Senate Report No. 109, 100th Congress, 1st session at 24–25) which stated that:

> The moratorium does not eliminate the limits on income and resources of eligible individuals and families under section 1903(f) (including the requirements that the applicable medically needy income level not exceed the amount determined in accordance with standards prescribed by the Secretary to be equivalent to 133⅓ percent of the most generous AFDC eligibility standard, and that the income of individuals receiving a State supplementary payment in a medical institution or receiving home and community-based services under a special income standard not exceed 300% of the SSI standard). The moratorium also does not permit States to provide Medicaid benefits to those who are not ''categorically related'' individuals (that is, individuals who would not be eligible for Medicaid, regardless of the amount of their income and resources)''.

Since, as the legislative history indicates, section 1902(r)(2) of the Act is essentially the codification of the DRA moratorium, we continued to apply the 133⅓ percent FFP limit at section 1903(f)(1) of the Act when developing the implementing regulations for section 1902(r)(2) of the Act.

However, subsequent experience has shown that the policy we adopted restricted the flexibility Congress intended States to have when it enacted section 1902(r)(2) of the Act in ways we did not foresee when we published the current regulations. The real effect of the policy we adopted was to make it almost impossible for States to actually use less restrictive income methodologies for many eligibility groups, including the medically needy, because use of such methodologies would violate the 133⅓ percent FFP limit. States have noted that the application of the 133⅓ percent FFP limit prior to use of less restrictive income methodologies unnecessarily limits their flexibility to provide health coverage under Medicaid and to simplify program administration by modifying cash assistance financial methodologies that do not work well in the Medicaid context.

Further, the passage of Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, leads us to believe that the current application of the FFP income limits under section 1902(r)(2) of the Act no longer reflects Congressional intent. In enacting this legislation, Congress clearly expressed its intent that States should have the flexibility to depart from cash assistance program-based income criteria to define Medicaid eligibility. Given that Congress chose to sever the link between cash assistance and Medicaid under this legislation, we believe it is valid to conclude that Congress did not actually intend that FFP limits, which are based on cash assistance standards, apply prior to use of less restrictive financial methodologies under section 1902(r)(2) of the Act for those eligibility groups to which section 1902(r)(2) of the Act applies.

Also, section 1903(f) of the Act was enacted prior to section 1902(r)(2) of the Act. Had Congress intended that the 133⅓ percent FFP limit apply prior to use of less restrictive income methodologies, it could have amended section 1903(f)(1) of the Act or section 1902(r)(2) of the Act to so state. The fact that section 1903(f)(1) of the Act was not so amended indicates that Congress intended that the 133⅓ percent FFP limit apply after, not before, use of less restrictive income methodologies.

Thus, the change in this regulation gives States needed additional flexibility in setting Medicaid eligibility requirements. Even though section 1902(r)(2) of the Act was derived from the DRA moratorium, its own legislative history did not contain any similar discussion of its interaction with the section 1903(f) of the Act FFP limits. As such, we do not believe it is necessary to consider the legislative history of DRA to be determinative of Congressional understanding of the operation of section 1902(r)(2) of the Act.

II. Provisions of the Final Regulations

We are amending § 435.1007 to change the requirement that the 133 ⅓ percent FFP limit applies prior to use of any less restrictive income methodologies under section 1902(r)(2) of the Act.

Section 435.1007 Categorically Needy, Medically Needy, and Qualified Medicare Beneficiaries

In § 435.1007(b), we are deleting the phrase ''does not exceed'' and replace it with the word ''exceeds''. This is purely an editorial and technical change to correct an error in wording in the current regulation which is contrary to statute. This change is necessary in order to conform the regulation to the statute's requirement. This change was explained in the proposed rule. We received no public comments on this change.

In § 435.1007, we are amending paragraph (e) by removing the phrase ''are applied and before the less restrictive income deductions under § 435.601(c)'' and replacing it with the following language: ''and any income disregards in the State plan authorized under section 1902(r)(2)''.

We are further amending § 435.1007 by adding a new paragraph (f) to read: ''A State may use the less restrictive income methodologies included under its State plan as authorized under § 435.601 in determining whether a family's income exceeds the limitation described in paragraph (b) of this section.''

III. Analysis of and Responses to Public Comments

We received a total of 37 comments from States, advocacy groups, associations and a few individuals on the proposed regulation that was published on October 31, 2000 (65 FR 64919). All of the comments we received expressed support for the proposed change. A number chose not to offer any suggestions or other comments beyond an expression of support. Some offered examples, similar to those we included in the preamble to the NPRM, of ways States could use the proposed change to alleviate current problems with their Medicaid programs. These included such things as raising low medically needy income levels, reducing institutional bias, and administrative simplification. We appreciate the overwhelming show of support for the proposed change.

In addition to expressing support for the proposed rule, a number of commenters offered comments on five separate issues concerning the proposed change. Those comments, and our responses, are discussed below.

Comment: One commenter expressed concern that unless changes are also made to a number of subsections of 42 CFR 435, HCFA will not be bound by the proposed policy change. The commenter expressed further concern that unless additional changes are made, States might still be subject to FFP penalties if an individual's income prior to application of the less restrictive methodologies adopted pursuant to section 1902(r)(2) of the Act exceeds the FFP limitation in section 1903(f) of the Act.

Response: We do not agree that additional changes to the regulations are needed. We believe that the proposed change makes it clear that income remaining after application of any less restrictive methodologies adopted pursuant to section 1902(r)(2) of the Act is the income used to determine whether the 133⅓ percent limitation on FFP is exceeded under all circumstances. States will not be subject to FFP penalties because income prior to application of the less restrictive methodologies exceeds the 133⅓ percent limitation in section 1903(f)(1) of the Act. We proposed this change with the express intent that States would not be subject to such FFP penalties, and we believe that the changes adopted here accomplish that goal. We are clearly bound by this regulation as we are bound by all regulations that we promulgate.

Comment: Several commenters urged that the proposed change go into effect as soon as possible; some requested an effective date of January 1, 2001.

Response: We agree that the change should be effective at the earliest possible date. However, this regulation is considered to be a major rule and the statute governing congressional review of agency rulemaking requires that final regulations that are major rules cannot be effective sooner than 60 days after publication in the **Federal Register** unless a showing of good cause to dispense with the notice and public comment procedures that were included in the rule. To make this showing the agency must find that notice and public comment procedures are impracticable, unnecessary, or contrary to the public interest. We do not believe we can satisfy this test since the rule is being adopted after notice and public comment. The effective date of this change is set forth in the Effective Date section of this final rule.

Comment: Several commenters suggested that the preamble be expanded to include such things as a clear explanation and list of the eligibility groups to which the proposed change would apply, a similar list of the groups to which section 1902(r)(2) of the Act applies but which were not subject to the FFP limits under the old regulation, and discussions of steps States can take to make their income eligibility policies more supportive of efforts to integrate people with disabilities in the mainstream of community life. One commenter also suggested providing ongoing guidance on this general subject in a publicly visible place such as the HCFA website.

Response: In general, the new rule applies to all of the optional categorically needy eligibility groups cited in the statute at section 1902(a)(10)(A)(ii) of the Act *except* for those groups which were already exempt from the FFP limits under existing statute (section 1903(f)(4) of the Act). Also, the new rule applies to the medically needy.

We agree that more information about the various topics listed above would be of considerable value to States and other interested parties. However, this final rule is not a technical assistance document, and for that reason we believe that much of the detailed programmatic information and advice suggested by the commenters is best provided through other venues. Rather than include this kind of extensive material regarding more general Medicaid eligibility topics in the preamble to this final rule, we will provide guidance on these and similar issues to States and others through an administrative issuance, such as a letter to all State Medicaid Directors. Administrative guidance issued in such a form would also be available to the public on HCFA's website.

Comment: One commenter suggested that in addition to our proposed revision of the regulations at § 435.1007, we should similarly revise the regulations at § 435.1005 to allow the use of less restrictive income methodologies before applying the FFP limits for the special income level group (section 1902(a)(10)(A)(ii)(V) of the Act). This would enable States to disregard additional income for individuals eligible under this group.

Response: We understand the commenter's interest in not having the FFP limits apply to less restrictive income disregards for the special income level group. However, the Medicaid statute precludes our doing so.

Most of the eligibility groups to which the FFP limits apply are subject to a limit that is defined in section 1903(f)(1)(B)(i) of the Act as 133⅓ percent of the State's AFDC payment standard. The special income level group, however, is subject to a different FFP limit which is defined in section 1903(f)(4)(C) of the Act as 300 percent of the SSI Federal Benefit Rate. Further, this section of the statute includes specific requirements for how a person's income is to be counted in determining whether his or her income exceeds the 300 percent FFP limit. Under the statute, the person's income is determined under section 1612 of the Act, but without regard to the exclusions and disregards listed in subsection 1612(b) of the Act.

In other words, the person's gross income, without the application of any disregards normally used by the SSI program to determine eligibility, must be used to determine whether the person's income exceeds the 300 percent FFP limit. By contrast, the sections of the statute pertaining to the 133⅓ percent FFP limit do not include similar specific requirements for how income is to be counted in determining whether a person's income exceeds the FFP limit.

Because section 1903(f)(4)(C) of the Act specifies how income is to be counted in determining whether a person's income exceeds the 300

percent FFP limit, the statute precludes our being able to permit, via regulation, the use of less restrictive income methodologies prior to application of that FFP limit. The statute itself would have to be changed to permit the use of less restrictive income methodologies in that manner.

Comment: Three commenters suggested that we make the use of less restrictive methodologies mandatory for States rather than their use being optional as is now the case. One commenter further suggested that provision of home and community-based waiver services should also be made mandatory for States.

Response: Use of less restrictive methodologies and provision of home and community-based waiver services is optional for States because the Medicaid statute gives States the choice of using such methodologies and providing such services. Given the language of the statute itself, we have no authority to require through regulations that States use less restrictive methodologies or provide home and community-based waiver services.

IV. Provisions of the Final Regulations

This final rule incorporates in their entirety the provisions of the proposed rule.

V. 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 1995 (44 U.S.C. 35).

VI. Regulatory Impact

A. Overall Impact

We and the Office of Management and Budget have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). This rule is considered to be a major rule with economically significant effects.

The cost impact of this final rule is extremely difficult to project, given the broad discretion and flexibility that States will have in implementing its provisions. In the proposed rule we cited a projected cost to the Federal government of $860 million over 5 years for Medicaid and $100 million for Medicare. As those estimates were based on information from only two States, we solicited feedback on the potential financial impact this rule might have. We received no comments specifically related to cost issues in the responses to the proposed rule; nevertheless, we are providing additional detail concerning the original cost estimates. The table below summarizes our estimated 5-year costs to Medicaid and Medicare.

ESTIMATED COST OF REMOVING FFP LIMITS UNDER SECTION 1902(r)(2) OF THE ACT

(Costs in millions of dollars)

	FFY 2001	FFY 2002	FFY 2003	FFY 2004	FFY 2005	FFYs 2001–2005
Federal Medicaid	40	125	220	230	245	860
State Medicaid	30	100	175	185	190	680
Total Medicaid	70	225	395	415	435	1540
Medicare	10	15	25	25	25	100

As stated in the proposed rule, these estimates were developed from cost information about two States (Utah and California) which expressed interest in using the regulation to expand their Medicaid programs. Estimated costs for these States were related to their aggregate Medicaid spending for the medically needy and projected to the national level assuming that states representing one-fourth of Medicaid expenditures would implement changes of a similar magnitude. The one-fourth assumption was based on our belief that the potential costs of broader expansions would serve to limit State participation, at least during the 5-year budget window. The Medicare cost results from increased payments under the Medicare disproportionate share hospital (DSH) program and results from the anticipated increase in Medicaid enrollment accompanying the Medicaid costs shown above. Projected Medicare DSH cost per Medicaid beneficiary were applied to this increased enrollment to obtain the $100 million 5-year Medicare DSH cost.

Arriving at the Medicaid and Medicare costs was difficult due to the fact that implementation of the option under this rule is entirely at the discretion of the State. Further, States that choose to exercise the option have great latitude in establishing the extent to which, and the eligibility groups for which, the option would be applied under their State Medicaid plans.

Benefits of the Proposed Rule Change

We believe this change will benefit both States and individuals in a number of ways. For example, under normal eligibility rules, States are required to count many kinds of income. Some of these types of income are administratively burdensome to deal with, and often do not materially affect the outcome of the eligibility determination. Some examples are the value of food or shelter provided to an applicant (called in-kind support and maintenance), income belonging to a parent of a child, or a spouse who is not applying for benefits (called deemed income), and low amounts of income such as interest earned on savings accounts. This final rule will allow States to use income disregards to simplify the process of determining eligibility by not counting types of income that primarily impose an administrative burden.

Medically Needy Income Limits

Under a medically needy program, States can choose to cover under Medicaid individuals with income that is too high to otherwise be eligible, but who, by subtracting incurred medical expenses from their income, could reduce their income to the State's medically needy income standard. This process is known as spending down excess income, or ''spenddown''.

However, in many States the medically needy income standard is very low; in at least 22 States, the

medically needy income standard is actually lower than the income standard for SSI benefits ($512 a month for an individual in 2000). In four States, the medically needy income standard is less than $200 a month. This creates a situation where individuals whose income is just slightly over the limit that would allow them to receive Medicaid as SSI recipients must spend down a certain amount of ''excess'' income to reach the medically needy income level.

For example, a person with $512 a month in countable income can be eligible for SSI and receive Medicaid coverage in most States. A person with just $1 more cannot be eligible for SSI, and thus cannot receive Medicaid health coverage based on receiving SSI benefits. Depending on a particular State's medically needy income level, such an individual with $513 in countable monthly income may have to spend over $300 on medical care each month just to reach a medically needy income limit that is that far below the SSI level.

Under the Medicaid statute, States cannot just increase their medically needy income levels to deal with this problem. However, under this final rule, a State could use section 1902(r)(2) of the Act to disregard additional amounts of income under its medically needy program, effectively reducing or even eliminating the large spenddown liability described in the example above.

Helping People Move from Institutions to the Community

The medically needy spenddown problem described above can also have adverse effects for people in medical institutions who would like to receive care in community settings. Since Medicaid will pay for room and board expenses in a medical institution, the individual needs to retain relatively little income after application of the medically needy spenddown requirement. However, Medicaid will not pay for room or board expenses in a community setting. Few individuals will be able to move from a medical institution to the community if they are permitted to retain only $200–$400 after meeting Medicaid spenddown requirements.

The practical effect of this is that many people in institutions who would like to move to the community, and who would normally be able to manage in a community setting, remain in the institution because they literally cannot leave. This final rule gives States opportunities to correct spenddown problems so that more people could leave institutional settings and live in the community.

Encouraging Work Effort

While legislation enacted in the last few years has given States new options for providing Medicaid to individuals with disabilities who want to work, States may want to encourage work effort among individuals eligible under other groups such as the medically needy, or among individuals who may not readily fit into one of the new work incentives groups. One way to encourage work effort is to allow people to keep more of the income they earn without forcing them to either spend more for medical care under a medically needy spenddown, or risk losing Medicaid altogether.

Under section 1902(r)(2) of the Act a State could do that by increasing the amount of earned income that is not counted in determining a person's eligibility. However, the current application of the FFP limits to the use of less restrictive income disregards effectively precludes States from offering that kind of encouragement for many eligibility groups. This final rule removes that restriction, giving States another way to encourage work effort.

Expanding Health Coverage

In addition to the specific examples described above, section 1902(r)(2) of the Act gives States the option of extending health coverage to more individuals by disregarding additional types and amounts of income, thereby allowing people who could not otherwise meet the program's eligibility requirements to become eligible. However, the current application of the FFP limits to the use of less restrictive income disregards greatly reduces the options States have to implement that kind of health coverage expansion. This final rule will give States the full flexibility provided by section 1902(r)(2) of the Act to expand their base of eligible individuals if they choose to do so.

Youth Age 19–20 Years

This change provides State flexibility to offer health coverage to youth 19 and 20 years of age consistent with the health coverage options available under Federal law to children under 19 years of age as described in section 1902(l) of the Act. Such youth are often at a high risk of being uninsured because they are still in school or beginning employment. To clarify, youth 19 and 20 years of age are included in the group described in section 1902(a)(10)(A)(ii)(I) of the Act. Under current statutory and regulatory authority, States are able to effectively expand eligibility of all children under 19 years of age to whatever level they choose. However, the eligibility of youth 19 to 20 years of age (as children) is limited to the group noted above, and that group is currently subject to the FFP cap. This final regulation allows States to expand eligibility for these older children to the same level that they use for children under 19 years of age.

Effect on Small Businesses and Small Rural Hospitals

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. Individuals and States are not included in the definition of a small entity.

We expect that small entities will be indirectly impacted by this final rule. We expect that any indirect impact will be positive. States will decide individually whether to take advantage of the options that this final rule makes available. If a State exercises the options under this final rule, small entities such as small businesses, nonprofit organizations, and governmental agencies may receive additional Medicaid payments as a result of their service to the increased number of individuals who would be eligible under the program. We invited comments in this area and received none. Because the indirect impact on small entities depends on the extent and degree to which States exercise the options under this rule and the number of small entities that may be indirectly impacted, we are unable with any degree of certainty to estimate the fiscal impact on small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have significant impact on the operations of a substantial number of small rural hospitals. This 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.

This final rule will have only indirect impact on small rural hospitals. We believe that any indirect impact will be positive. This final rule primarily affects States and each State will make its own decision regarding acceptance of the options presented in these regulations. As a result, small rural hospitals are in no way involved in the decision-making

process and would be impacted only to the extent that a State's use of less restrictive income methodologies could result in some increase in the number of individuals eligible for Medicaid. This in turn could result in a slight increase in utilization of rural hospital services which could increase the Medicaid payment received by these hospitals. We invited comments in this area and received none. Because the indirect impact on small rural hospitals depends on the extent and degree to which States exercise the options under this rule and the number of small rural hospitals that may be indirectly impacted, we are unable with any degree of certainty to estimate the fiscal impact on small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. This final rule will have no impact on the private sector. The rule imposes no requirements on State, local or tribal governments. Rather, it offers State governments additional flexibility in operating their Medicaid programs, but does not require that they make any changes in their programs.

Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that would impose substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule imposes no requirement costs on governments, nor does it preempt State law or otherwise have Federalism implications.

We have had discussions of this issue with a number of State governments since approximately 1990. Those discussions have taken place both with individual States and with groups of States, including HCFA's Medicaid Eligibility Technical Advisory Group and the National Association of State Medicaid Directors Executive Committee. Based on the many discussions we have had, and comments we received as discussed elsewhere in this final rule, we believe States are overwhelmingly in favor of the change.

B. Anticipated Effects

1. Effects on State Governments

This final rule gives States greater flexibility in designing and operating their Medicaid programs.

2. Effects on Providers

Providers will only be indirectly affected by this rule and we expect any indirect impact will be positive. Each State will decide whether to take advantage of the options the regulations make available. To the extent that States decide to exercise their options under this final rule, we expect the ultimate indirect impact on providers to be positive due to the added Medicaid revenues that providers may garner.

3. Effects on the Medicare and Medicaid Programs

This rule may increase Medicare costs by about $100 million over 5 years. Since the rule may increase the number of individuals eligible for Medicaid who receive inpatient hospital services, it may affect the calculation of hospitals' disproportionate share hospital (DSH) calculations under the Medicare program. We estimate that Medicare DSH payments could increase by $100 million over 5 years due to changes in this rule.

Under Medicaid, it is projected that the Federal cost of this rule could be as much as $860 million over 5 years. However, because actual implementation of the provisions of the rule is strictly at the option of each State, actual Federal program costs would depend on whether, and to what degree, States choose to take advantage of the flexibility provided by this final rule.

C. Alternatives Considered

There were few alternatives to the proposed rule to consider. One alternative was to maintain the requirement that the FFP limits apply prior to use of less restrictive income methodologies under § 435.601, but allow additional disregards at a somewhat higher level than is possible under the current regulations. However, this would not provide States the level of flexibility to operate their Medicaid programs that is provided under the proposed rule, and thus would be of only limited value. We rejected this alternative because it would not give States what they need to effectively operate their Medicaid programs.

We also considered pursuing a legislative option that would have changed the Medicaid statute itself to clarify that the FFP limits at section 1903(f) of the Act should apply after, rather than before, the use of any less restrictive income methodologies under section 1902(r)(2) of the Act. However, as explained previously the current policy concerning application of the FFP limits to less restrictive income methodologies does not reflect a clear statutory requirement, but rather is an administrative interpretation of the statute. Since the statute as written will support this change in policy, we believed the issue should be addressed via a change in the regulations rather than a change in the statute. Also, we believe that this rule is the most efficient and expedient way of accomplishing the desired change.

D. Conclusion

We expect this rule to benefit State Medicaid programs and Medicaid beneficiaries by giving States additional flexibility in designing and operating their programs. In turn, this would allow States to make individuals eligible for Medicaid who otherwise could not be eligible under the current regulations.

Because this rule is considered major rule that is economically significant, we have prepared a regulatory impact statement. We believe that this rule will have an estimated cost of $960 million dollars over 5 years based on best available data. In addition, we certify that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

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

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.

For the reasons set forth in the preamble, 42 CFR part 435 is amended as set forth below:

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

2. Section 435.1007 is amended by revising paragraphs (b) and (e) and adding paragraph (f) to read as follows:

§ 435.1007 Categorically needy, medically needy, and qualified Medicare beneficiaries.

* * * * *

(b) Except as provided in paragraphs (c) and (d) of this section, FFP is not available in State expenditures for individuals (including the medically needy) whose annual income after deductions specified in § 435.831(a) and (c) exceeds the following amounts, rounded to the next higher multiple of $100.

* * * * *

(e) FFP is not available in expenditures for services provided to categorically needy and medically needy recipients subject to the FFP limits if their annual income, after the cash assistance income deductions and any income disregards in the State plan authorized under section 1902(r)(2) of the Act are applied, exceeds the 133⅓ percent limitation described under paragraphs (b), (c), and (d) of this section.

(f) A State may use the less restrictive income methodologies included under its State plan as authorized under § 435.601 in determining whether a family's income exceeds the limitation described in paragraph (b) of this section.

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

Dated: January 4, 2001.

Robert A. Berenson, M.D.,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: January 4, 2001.

Donna E. Shalala,

Secretary.

[FR Doc. 01–666 Filed 1–18–01; 11:49 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 64 and 68

[WT Docket No. 99–217; CC Docket No. 96–98; CC Docket No. 88–57; FCC 00–366]

Promotion of Competitive Networks in Local Telecommunications Markets

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission takes actions to further competition in local communications markets by ensuring that competing telecommunications providers are able to provide services to customers in multiple tenant environments (MTEs). The actions that the Commission takes in this item will reduce the likelihood that incumbent local exchange carriers (LECs) can obstruct their competitors' access to MTEs, as well as address particular potentially anticompetitive actions by premises owners and other third parties.

DATES: The rule changes to 47 CFR 64.2500, 64.2501, and 64.2502, shall become effective March 12, 2001. The rule changes to 47 CFR 1.4000 and the rule changes amending the definition of the term ''demarcation point'' in 47 CFR 68.3 contain an information collection requirement that has not yet been approved by OMB; the FCC will publish a document in the **Federal Register** announcing the effective date of these rule changes. Comments from the public, OMB, and other agencies on the information collections contained in this document are due March 12, 2001.

ADDRESSES: A copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to edward.springer@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Lauren Van Wazer at (202) 418–0030 or Joel Taubenblatt at (202) 418–1513 (Wireless Telecommunications Bureau). For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the First Report and Order in WT Docket No. 99–217, the Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96–98, and the Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88–57 (collectively, the ''Order''), FCC 00–366, adopted October 12, 2000 and released October 25, 2000. This summary also reflects errata issued in this proceeding subsequent to the release of this Order. The Commission seeks further comments on the issues in this proceeding in a Further Notice of Proposed Rulemaking, available at the addresses listed below and summarized separately in the **Federal Register**. The complete text of the document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 445 12th Street, SW., CY–B400, Washington, D.C. 20554. This document is also available via the Internet at *http://fcc.gov/Bureaus/Wireless/Orders/2000/fcc00366.pdf.*

Paperwork Reduction Act

This Order contains a new information collection as described in Section D of the Final Regulatory Flexibility Analysis set forth below. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public, Office of Management and Budget (OMB), and other federal agencies to comment on the information collection(s) contained in this Order as required by the Paperwork Reduction Act of 1995, Public Law 104–13. It will be submitted to the OMB for review under section 3507(d) of the PRA. Public, OMB, and other agency comments are due March 12, 2001. Comments should address: (a) Whether the new collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

A copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to edward.springer@omb.eop.gov.

OMB Control Number: 3060–XXXX.

Title: Promotion of Competitive Networks in Local Telecommunications Markets; Wireless Communications Association International, Inc. Petition for Rulemaking to Amend section 1.4000 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed to Provide Fixed Wireless Services; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning