

under State law, and CMS therefore waives the requirements of this subpart with respect to such an HHA if, during the preceding 5 years the HHA has—

(a) Not had any unpaid claims or unpaid civil money penalties or assessments; and

(b) Not had any of its claims referred by CMS to the Department of Justice or the General Accounting Office in accordance with part 401 of this chapter.

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

§ 489.63 Parties to the bond.

The surety bond must name the HHA as Principal, CMS as Obligee, and the surety company (and its heirs, executors, administrators, successors and assignees, jointly and severally) as Surety.

§ 489.64 Authorized Surety and exclusion of surety companies.

(a) An HHA may obtain a surety bond required under § 489.61 only from an authorized Surety.

(b) An authorized Surety is a surety company that—

(1) Has been issued a Certificate of Authority by the U.S. Department of the Treasury in accordance with 31 U.S.C. 9304 to 9308 and 31 CFR parts 223, 224, and 225 as an acceptable surety on Federal bonds and the Certificate has neither expired nor been revoked; and

(2) Has not been determined by CMS to be an unauthorized Surety for the purpose of an HHA obtaining a surety bond under this section.

(c) CMS determines that a surety company is an unauthorized Surety under this section—

(1) If, upon request by CMS, the surety company fails to furnish timely confirmation of the issuance of, and the validity and accuracy of information appearing on, a surety bond an HHA presents to CMS that shows the surety company as Surety on the bond;

(2) If, upon presentation by CMS to the surety company of a request for payment on a surety bond and of sufficient evidence to establish the surety company's liability on the bond, the surety company fails to timely pay CMS in full the amount requested, up to the face amount of the bond; or

(3) For other good cause.

(d) Any determination CMS makes under paragraph (c) of this section is effective immediately when notice of the determination is published in the FEDERAL REGISTER and remains in effect until a notice of reinstatement is published in the FEDERAL REGISTER.

(e) Any determination CMS makes under paragraph (c) of this section does not affect the Surety's liability under any surety bond issued by a surety company to an HHA before notice of such determination is published in accordance with paragraph (d) of this section.

(f) A determination by CMS that a surety company is an unauthorized Surety under this section is not a debarment, suspension, or exclusion for the purposes of Executive Order No. 12549 (3 CFR, 1986 comp., p. 189).

§ 489.65 Amount of the bond.

(a) *Basic rule.* The amount of the surety bond must be \$50,000 or 15 percent of the Medicare payments made by CMS to the HHA in the HHA's most recent fiscal year for which a cost report has been accepted by CMS, whichever is greater.

(b) *Computation of the 15 percent: Participating HHA.* The 15 percent is computed as follows:

(1) For the initial bond—on the basis of Medicare payments made by CMS to the HHA in the HHA's most recent fiscal year as shown in the HHA's most recent cost report that has been accepted by CMS. If the initial bond will cover less than a full fiscal year, the computation of the 15 percent will be based on the number of months of the fiscal year that the bond will cover.

(2) For subsequent bonds—on the basis of Medicare payments made by CMS in the most recent fiscal year for which a cost report has been accepted. However, if payments in the first six months of the current fiscal year differ from such an amount by more than 25 percent, then the amount of the bond is 15 percent of such payments projected on an annualized basis.

(c) *Computation of 15 percent: An HHA that seeks to become a participating HHA by obtaining assets or ownership interest.* For an HHA that seeks to become a participating HHA by purchasing the