

Subpart C—Medicaid Integrity Program

SOURCE: 72 FR 67655, Nov. 30, 2007, unless otherwise noted.

§ 455.200 Basis and scope.

(a) *Statutory basis.* This subpart implements section 1936 of the Social Security Act that establishes the Medicaid Integrity Program, under which the Secretary will promote the integrity of the program by entering into contracts with eligible entities to carry out the activities under this subpart C.

(b) *Scope.* This subpart provides for the limitation on a contractor's liability to carry out a contract under the Medicaid Integrity Program and to carry out the Medicaid integrity audit program functions.

[73 FR 55771, Sept. 26, 2008]

§ 455.202 Limitation on contractor liability.

(a) A program contractor, a person, or an entity employed by, or having a fiduciary relationship with, or who furnishes professional services to a program contractor will not be held to have violated any criminal law and will not be held liable in any civil action, under any law of the United States or of any State (or political subdivision thereof), by reason of the performance of any duty, function, or activity required or authorized under this subpart or under a valid contract entered into under this subpart, provided due care was exercised in that performance and the contractor has a contract with CMS under this subpart.

(b) CMS pays a contractor, a person, or an entity described in paragraph (a) of this section, or anyone who furnishes legal counsel or services to a contractor or person, a sum equal to the reasonable amount of the expenses, as determined by CMS, incurred in connection with the defense of a suit, action, or proceeding, if the following conditions are met:

(1) The suit, action, or proceeding was brought against the contractor, person or entity by a third party and relates to the contractor's, person's or entity's performance of any duty, func-

tion, or activity under a contract entered into with CMS under this subpart.

(2) The funds are available.

(3) The expenses are otherwise allowable under the terms of the contract.

§ 455.230 Eligibility requirements.

CMS may enter into a contract with an entity to perform the activities described at § 455.232, if it meets the following conditions:

(a) The entity has demonstrated capability to carry out the activities described below.

(b) In carrying out such activities, the entity agrees to cooperate with the Inspector General of the Department of Health and Human Services, the Attorney General, and other law enforcement agencies, as appropriate, in the investigation and deterrence of fraud and abuse in relation to Title XIX of the Social Security Act and in other cases arising out of such activities.

(c) Maintains an appropriate written code of conduct and compliance policies that include, without limitation, an enforced policy on employee conflicts of interest.

(d) The entity complies with such conflict of interest standards as are generally applicable to Federal acquisition and procurement.

(e) The entity meets such other requirements the Secretary may impose.

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§ 455.232 Medicaid integrity audit program contractor functions.

The contract between CMS and a Medicaid integrity audit program contractor specifies the functions the contractor will perform. The contract may include any or all of the following functions:

(a) Review of the actions of individuals or entities furnishing items or services (whether on a fee-for-service, risk, or other basis) for which payment may be made under a State Plan approved under title XIX of the Act (or under any waiver of such plan approved under section 1115 of the Act) to determine whether fraud, waste, or abuse has occurred, is likely to occur, or whether such actions have the potential for resulting in an expenditure of funds under title XIX in a manner

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which is not intended under the provisions of title XIX.

(b) Auditing of claims for payment for items or services furnished, or administrative services rendered, under a State Plan under title XIX to ensure proper payments were made. This includes: cost reports, consulting contracts, and risk contracts under section 1903(m) of the Act.

(c) Identifying if overpayments have been made to individuals or entities receiving Federal funds under title XIX.

(d) Educating providers of service, managed care entities, beneficiaries, and other individuals with respect to payment integrity and quality of care.

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§ 455.234 Awarding of a contract.

(a) CMS awards and administers Medicaid integrity audit program contracts in accordance with acquisition regulations set forth at 48 CFR chapters 1 and 3, this subpart, and all other applicable laws and regulations. These competitive procedures and requirements for awarding Medicaid integrity audit program contracts are to be used as follows:

(1) When entering into new contracts under this section.

(2) At any other time considered appropriate by the Secretary.

(b) An entity is eligible to be awarded a Medicaid integrity audit program contract only if meets the eligibility requirements established in § 455.202, 48 CFR chapter 3, and all other applicable laws and requirements.

[73 FR 55771, Sept. 26, 2008]

§ 455.236 Renewal of a contract.

(a) CMS specifies the initial contract term in the Medicaid integrity audit program contract. CMS may, but is not required to, renew a Medicaid integrity audit program contract without regard to any provision of law requiring competition if the contractor has met or exceeded the performance requirements established in the current contract.

(b) CMS may renew a Medicaid integrity audit program contract without competition if all of the following conditions are met:

(1) The Medicaid integrity audit program contractor continues to meet the requirements established in this subpart.

(2) The Medicaid integrity audit program contractor meets or exceeds the performance requirements established in its current contract.

(3) It is in the best interest of the government.

(c) If CMS does not renew a contract, the contract will end in accordance with its terms. The contractor will not have a right to a hearing or judicial review regarding CMS's renewal or non-renewal decision.

[73 FR 55771, Sept. 26, 2008]

§ 455.238 Conflict of interest.

(a) Offerors for Medicaid integrity audit program contracts, and Medicaid integrity audit program contractors, are subject to the following requirements:

(1) The conflict of interest standards and requirements of the Federal Acquisition Regulation organizational conflict of interest guidance, found under 48 CFR subpart 9.5.

(2) The standards and requirements that are contained in each individual contract awarded to perform activities described under section 1936 of the Act.

(b) Post-award conflicts of interest: CMS considers that a post-award conflict of interest has developed if, during the term of the contract, one of the following occurs:

(1) The contractor or any of its employees, agents, or subcontractors received, solicited, or arranged to receive any fee, compensation, gift (defined at 5 CFR 2635.203(b)), payment of expenses, offer of employment, or any other thing of value from any entity that is reviewed, audited, investigated, or contacted during the normal course of performing activities under the Medicaid integrity audit program contract.

(2) CMS determines that the contractor's activities are creating a conflict of interest.

(c) If CMS determines that a conflict of interest exists during the term of the contract, among other actions, CMS may:

(1) Not renew the contract for an additional term.

(2) Modify the contract.