agreement, and CMS may make determinations with respect to renewal of an intermediary agreement under §421.110.

(b) When taking the actions specified in paragraph (a) of this section, the Secretary or CMS may consider the performance of the individual intermediary in its Medicare operations using the factors contained in the performance criteria specified in §421.120 and the performance standards specified in §421.122.

(c) In addition, when taking the actions listed in paragraph (a) of this section, the Secretary or CMS may consider factors relating to—

1. Consistency in the administration of program policy;
2. Development of intermediary expertise in difficult areas of program administration;
3. Individual capacity of available intermediaries to serve providers as it is affected by such considerations as—
   (i) Program emphasis on the number or type of providers to be served; or
   (ii) Changes in data processing technology;
4. Overdependence of the program on the capacity of an intermediary to an extent that services could be interrupted;
5. Economy in the delivery of intermediary services;
6. Timeliness in the delivery of intermediary services;
7. Duplication in the availability of intermediaries;
8. Conflict of interest between an intermediary and provider; and
9. Any additional pertinent factors.

§421.122 Performance standards.

(a) Development of standards. In addition to the performance criteria (§421.120), CMS develops detailed performance standards for use in evaluating intermediary performance which may be based on historical performance, application of acceptable statistical measures of variation to nationwide intermediary experience during a base period, or changing program emphases or requirements. These standards are also developed considering intermediary experience and evaluate the specific requirements of each functional responsibility or criterion.

(b) Factors beyond intermediary’s control. To identify measurable factors that significantly affect an intermediary’s performance, but that are not within the intermediary’s control, CMS will—

1. Study the performance of intermediaries during the base period, and
2. Consider the noncontrollable factors in developing performance standards.

(c) Publication of standards. The development and revision of standards for