

## § 417.480

(j) *Sanctions against the HMO or CMP.* CMS may apply intermediate sanctions, or the Office of Inspector General may apply civil money penalties described at §417.500, if CMS determines that an HMO or CMP fails to comply with the requirements of this section.

[61 FR 13446, Mar. 27, 1996; 61 FR 46385, Sept. 3, 1996, as amended at 61 FR 69049, Dec. 31, 1996; 68 FR 50855, Aug. 22, 2003]

### § 417.480 Maintenance of records: Cost HMOs and CMPs.

A reasonable cost contract must provide that the HMO or CMP agrees to maintain books, records, documents, and other evidence of accounting procedures and practices that—

- (a) Are sufficient to—
  - (1) Ensure an audit trail; and
  - (2) Properly reflect all direct and indirect costs claimed to have been incurred under the contract; and
- (b) Include at least records of the following:
  - (1) Ownership, HMO or CMP, and operation of the HMO's or CMP's financial, medical, and other recordkeeping systems.
  - (2) Financial statements for the current contract period and three prior periods.
  - (3) Federal income tax or information returns for the current contract period and three prior periods.
  - (4) Asset acquisition, lease, sale, or other action.
  - (5) Agreements, contracts, and subcontracts.
  - (6) Franchise, marketing, and management agreements.
  - (7) Schedules of charges for the HMO's or CMP's fee-for-service patients.
  - (8) Matters pertaining to costs of operations.
  - (9) Amounts of income received by source and payment.
  - (10) Cash flow statements.
  - (11) Any financial reports filed with other Federal programs or State authorities.

[50 FR 1346, Jan. 10, 1985, as amended at 58 FR 38082, July 15, 1993; 60 FR 45680, Sept. 1, 1995]

## 42 CFR Ch. IV (10–1–23 Edition)

### § 417.481 Maintenance of records: Risk HMOs and CMPs.

A risk contract must provide that the HMO or CMP agrees to maintain and make available to CMS upon request, books, records, documents, and other evidence of accounting procedures and practices that—

- (a) Are sufficient to—
  - (1) Establish component rates of the ACR for determining additional and supplementary benefits; and
  - (2) Determine the rates utilized in setting premiums for State insurance agency purposes; and
- (b) Include at least any records or financial reports filed with other Federal agencies or State authorities.

[50 FR 1346, Jan. 10, 1985, as amended at 58 FR 38082, July 15, 1993; 60 FR 45680, Sept. 1, 1995]

### § 417.482 Access to facilities and records.

The contract must provide that the HMO or CMP agrees to the following:

- (a) HHS may evaluate, through inspection or other means, the quality, appropriateness, and timeliness of services furnished under the contract to its Medicare enrollees.
- (b) HHS may evaluate, through inspection or other means, the facilities of the HMO or CMP when there is reasonable evidence of some need for that inspection.
- (c) HHS, the Comptroller General, or their designees may audit or inspect any books and records of the HMO or CMP or its transferee that pertain to any aspect of services performed, reconciliation of benefit liabilities, and determination of amounts payable under the contract.
- (d) HHS may evaluate, through inspection or other means, the enrollment and disenrollment records for the current contract period and three prior periods, when there is reasonable evidence of some need for that inspection.
- (e) In the case of a reasonable cost HMO or CMP to make available for the purposes specified in paragraphs (a), (b), (c), and (d) of this section, its premises, physical facilities, and equipment, its records relating to its Medicare enrollees, the records specified in §417.480 and any additional relevant information that CMS may require.

(f) That the right to inspect, evaluate, and audit, will extend through three years from the date of the final settlement for any contract period unless—

(1) CMS determines there is a special need to retain a particular record or group of records for a longer period and notifies the HMO or CMP at least 30 days before the normal disposition date;

(2) There has been a termination, dispute, fraud, or similar fault by the HMO or CMP, in which case the retention may be extended to three years from the date of any resulting final settlement; or

(3) CMS determines that there is a reasonable possibility of fraud, in which case it may reopen a final settlement at any time.

[50 FR 1346, Jan. 10, 1985, as amended at 58 FR 38082, July 15, 1993]

**§ 417.484 Requirement applicable to related entities.**

(a) *Definition.* As used in this section, *related entity* means any entity that is related to the HMO or CMP by common ownership or control and—

(1) Performs some of the HMO's or CMP's management functions under contract or delegation;

(2) Furnishes services to Medicare enrollees under an oral or written agreement; or

(3) Leases real property or sells materials to the HMO or CMP at a cost of more than \$2,500 during a contract period.

(b) *Requirement.* The contract must provide that the HMO or CMP agrees to require all related entities to agree that—

(1) HHS, the Comptroller General, or their designees have the right to inspect, evaluate, and audit any pertinent books, documents, papers, and records of the subcontractor involving transactions related to the subcontract; and

(2) The right under paragraph (b)(1) of this section to information for any particular contract period will exist for a period equivalent to that specified in § 417.482(f).

(3) That payments must not be made to individuals and entities included on

the preclusion list, defined in § 422.2 of this chapter.

[50 FR 1346, Jan. 10, 1985, as amended at 58 FR 38082, July 15, 1993; 81 FR 80556, Nov. 15, 2016; 83 FR 16721, Apr. 16, 2018]

**§ 417.486 Disclosure of information and confidentiality.**

The contract must provide that the HMO or CMP agrees to the following:

(a) To submit to CMS—

(1) All financial information required under subpart O of this part and for final settlement; and

(2) Any other information necessary for the administration or evaluation of the Medicare program.

(b) To comply with the requirements set forth in part 420, subpart C, of this chapter pertaining to the disclosure of ownership and control information.

(c) To comply with the requirements of the Privacy Act, as implemented by 45 CFR part 5b and subpart B of part 401 of this chapter, with respect to any system of records developed in performing carrier or intermediary functions under §§ 417.532 and 417.533.

(d) To meet the confidentiality requirements of § 482.24(b)(3) of this chapter for medical records and for all other enrollee information that is—

(1) Contained in its records or obtained from CMS or other sources; and

(2) Not covered under paragraph (c) of this section.

[50 FR 1346, Jan. 10, 1985, as amended at 58 FR 38082, July 15, 1993; 60 FR 45680, Sept. 1, 1995]

**§ 417.488 Notice of termination and of available alternatives: Risk contract.**

A risk contract must provide that the HMO or CMP agrees to give notice as follows if the contract is terminated:

(a) At least 60 days before the effective date of termination, to give its Medicare enrollees a written notice that—

(1) Specifies the termination date; and

(2) Describes the alternatives available for obtaining Medicare services after termination.

(b) To pay the cost of the written notices.

[60 FR 45680, Sept. 1, 1995]