

contractual requirements exceeds the amount which CMS finds to be reasonable and adequate to meet the cost which must be incurred by an efficiently and economically operated intermediary, those high costs may also be grounds for adverse action.

[59 FR 682, Jan. 6, 1994]

§ 421.126 Termination of agreements.

(a) *Termination by intermediary.* An intermediary may terminate its agreement at any time by—

(1) Giving written notice of its intention to CMS and to the providers it services at least 180 days before its intended termination date; and

(2) Giving public notice of its intention by publishing a statement of the effective date of termination at least 60 days before that date. Publication must be in a newspaper of general circulation in each community served by the intermediary.

(b) *Termination by the Secretary, and right of appeal.* (1) The Secretary may terminate an agreement if—

(i) The intermediary fails to comply with the requirements of this subpart;

(ii) The intermediary fails to meet the criteria or standards specified in §§ 421.120 and 421.122; or

(iii) CMS has reassigned, under § 421.114 or § 421.116, all of the providers assigned to the intermediary.

(2) If the Secretary decides to terminate an agreement, he or she will offer the intermediary an opportunity for a hearing, in accordance with § 421.128.

(3) If the intermediary does not request a hearing, or if the hearing decision affirms the Secretary's decision, the Secretary will provide reasonable notice of the effective date of termination to—

(i) The intermediary;

(ii) The providers served by the intermediary; and

(iii) The general public.

(4) The providers served by the intermediary will be given the opportunity to nominate another intermediary, in accordance with § 421.104.

§ 421.128 Intermediary's opportunity for hearing and right to judicial review.

(a) *Basis for appeal.* An intermediary adversely affected by any of the fol-

lowing actions shall be granted an opportunity for a hearing:

(1) Assignment or reassignment of providers to another intermediary.

(2) Designation of a national or regional intermediary to serve a class of providers.

(3) Termination of the agreement.

(b) *Request for hearing.* The intermediary shall file the request with CMS within 20 days from the date on the notice of intended action.

(c) *Hearing procedures.* The hearing officer shall be a representative of the Secretary and not otherwise a party to the initial administrative decision. The intermediary may be represented by counsel and may present evidence and examine witnesses. A complete recording of the proceedings at the hearing will be made and transcribed.

(d) *Judicial review.* An adverse hearing decision concerning action under paragraph (a)(1) or (a)(2) of this section is subject to judicial review in accordance with 5 U.S.C. chapter 7.

(e) As specified in § 421.118, contracts awarded under the experimental authority of CMS are not subject to the provisions of this section.

(f) *Exception.* An intermediary adversely affected by the designation of a regional intermediary or an alternative regional intermediary for HHAs, or an intermediary for hospices, under § 421.117 of this subpart is not entitled to a hearing or judicial review concerning adverse effects caused by the designation of an intermediary.

[45 FR 42179, June 23, 1980, as amended at 47 FR 38540, Sept. 1, 1982; 49 FR 3660, Jan. 30, 1984; 53 FR 17945, May 19, 1988]

Subpart C—Carriers

§ 421.200 Carrier functions.

A contract between CMS and a carrier specifies the functions to be performed by the carrier. The contract may include any or all of the following functions:

(a) Any or all of the program integrity functions described in § 421.304 provided the following conditions are met:

(1) The carrier is continuing those functions under a contract entered into under section 1842 of the Act that was in effect on August 21, 1996.

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(2) The functions do not duplicate work being performed under a Medicare integrity program contract, except that the function related to developing and maintaining a list of DME may be performed under both a carrier contract and a Medicare integrity program contract.

(b) Receiving, disbursing, and accounting for funds in making payments for services furnished to eligible individuals within the jurisdiction of the carrier.

(c) Determining the amount of payment for services furnished to an eligible individual.

(d) Undertaking to adjust incorrect payments and recover overpayments when it is determined that an overpayment was made.

(e) Furnishing to CMS timely information and reports that CMS requests in order to carry out its responsibilities in the administration of the Medicare program.

(f) Maintaining records and making available to CMS the records necessary for verification of payments and for other related purposes.

(g) Establishing and maintaining procedures under which an individual enrolled under Part B is granted an opportunity for a redetermination.

(h) Upon inquiry, assisting individuals with matters pertaining to a carrier contract.

(i) Serving as a channel of communication to and from CMS of information, instructions, and other material as necessary for the effective and efficient performance of a carrier contract.

(j) Undertaking other functions as mutually agreed to by CMS and the carrier.

[72 FR 48886, Aug. 24, 2007]

§ 421.201 Performance criteria and standards.

(a) *Application of performance criteria and standards.* As part of the carrier evaluations mandated by section 1842(b)(2) of the Act, CMS periodically assesses the performance of carriers in their Medicare operations using performance criteria and standards.

(1) The criteria measure and evaluate carrier performance of functional responsibilities such as—

(i) Accurate and timely payment determinations;

(ii) Responsiveness to beneficiary, physician, and supplier concerns; and

(iii) Proper management of administrative funds.

(2) The standards evaluate the specific requirements of each functional responsibility or criterion.

(b) *Basis for criteria and standards.* CMS bases the performance criteria and standards on—

(1) Nationwide carrier experience;

(2) Changes in carrier operations due to fiscal constraints; and

(3) CMS's objectives in achieving better performance.

(c) *Publication of criteria and standards.* Before the beginning of each evaluation period, which usually coincides with the Federal fiscal year period of October 1–September 30, CMS publishes the performance criteria and standards as a notice in the FEDERAL REGISTER. CMS may not necessarily publish the criteria and standards every year. CMS interprets the statutory phrase “before the beginning of each evaluation period” as allowing publication of the criteria and standards after the Federal fiscal year begins, as long as the evaluation period of the carriers for the new criteria and standards begins after the publication of the notice.

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§ 421.202 Requirements and conditions.

Before entering into or renewing a carrier contract, CMS determines that the carrier—

(a) Has the capacity to perform its contractual responsibilities effectively and efficiently;

(b) Has the financial responsibility and legal authority necessary to carry out its responsibilities; and

(c) Will be able to meet any other requirements CMS considers pertinent, and, if designated a regional DMEPOS carrier, any special requirements for regional carriers under § 421.210 of this subpart.

[45 FR 42179, June 23, 1980, as amended at 57 FR 27307, June 18, 1992]