

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, such person or entity by a third party and relates to the contractor's, person's or entity's performance of any duty, function, 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.

### Subpart E—Medicare Administrative Contractors (MACs)

SOURCE: 71 FR 68229, Nov. 24, 2006, unless otherwise noted.

#### § 421.400 Statutory basis and scope.

(a) *Statutory basis.* This subpart implements section 1874A of the Act, which provides for the transition of the claims processing functions and operations for both Medicare Part A and Part B intermediaries and carriers to Medicare Administrative Contractors (MACs). The transition will occur between October 1, 2005, and October 1, 2011. MACs will be fully operational in distinct, nonoverlapping geographic jurisdictions by October 1, 2011.

(b) *Scope.* This subpart specifies the requirements under which providers and suppliers will be assigned to MACs.

#### § 421.401 Definitions.

For purposes of this subpart—

*Appropriate MAC* means a MAC that has a contract under section 1874A of

the Act to perform a particular Medicare administrative function in relation to:

(1) A particular individual entitled to benefits under Part A or enrolled under Part B, or both;

(2) A specific provider of services or supplier; or

(3) A class of providers of services or suppliers.

*Medicare Administrative Contractor (MAC)* means an agency, organization, or other person with a contract under section 1874A of the Act.

#### § 421.404 Assignment of providers and suppliers to MACs.

(a) *Definitions.* As used in this section—

*Chain provider* means a group of two or more providers under common ownership or control.

*Common control* exists when an individual, a group of individuals, or an organization has the power, directly or indirectly, to significantly influence or direct the actions or policies of the group of suppliers or eligible providers.

*Common ownership* exists when an individual, a group of individuals, or an organization possesses significant equity in the group of suppliers or eligible providers.

*Durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS)* means the types of services specified in § 421.210(b).

*Eligible provider* means a hospital, skilled nursing facility, or critical access hospital that meets the definition of a provider under § 400.202 of this chapter.

*Home office* means the entity that provides centralized management and administrative services to the individual providers or suppliers under common ownership and common control, such as centralized accounting, purchasing, personnel services, management direction and control, and other similar services.

*Ineligible provider* means a provider under § 400.202 of this chapter that is not an eligible provider.

*Medicare benefit category* means a category of covered benefits under Part A or Part B of the Medicare program (for example, inpatient hospital services,