

(1) *Maintenance of records*—(1) CMS retains records related to the administration of the suggestion program in accordance with 36 CFR part 1228 (the regulations for the National Archives and Records Administration).

(2) CMS does not disclose information submitted under the suggestion program, except as required by law.

[64 FR 66401, Nov. 26, 1999]

PART 421—MEDICARE CONTRACTING

Subpart A—Scope, Definitions, and General Provisions

Sec.

421.1 Basis, applicability, and scope.

421.3 Definitions.

421.5 General provisions.

Subpart B—Intermediaries

421.100 Intermediary functions.

421.103 Payment to providers.

421.104 Assignment of providers of services to intermediaries during transition to Medicare Administrative Contractors (MACs).

421.110 Requirements for approval of an agreement.

421.112 Considerations relating to the effective and efficient administration of the program.

421.114 Assignment and reassignment of providers by CMS.

421.120 Performance criteria.

421.122 Performance standards.

421.124 Intermediary's failure to perform efficiently and effectively.

421.126 Termination of agreements.

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

Subpart C—Carriers

421.200 Carrier functions.

421.201 Performance criteria and standards.

421.202 Requirements and conditions.

421.203 Carrier's failure to perform efficiently and effectively.

421.205 Termination by the Secretary.

421.210 Designations of regional carriers to process claims for durable medical equipment, prosthetics, orthotics and supplies.

421.212 Railroad Retirement Board contracts.

421.214 Advance payments to suppliers furnishing items or services under Part B.

Subpart D—Medicare Integrity Program Contractors

421.300 Basis, applicability, and scope.

421.302 Eligibility requirements for Medicare integrity program contractors.

421.304 Medicare integrity program contractor functions.

421.306 Awarding of a contract.

421.308 Renewal of a contract.

421.310 Conflict of interest requirements.

421.312 Conflict of interest resolution.

421.316 Limitation on Medicare integrity program contractor liability.

Subpart E—Medicare Administrative Contractors (MACs)

421.400 Statutory basis and scope.

421.401 Definitions.

421.404 Assignment of providers and suppliers to MACs.

Subpart F [Reserved]

AUTHORITY: 42 U.S.C. 1302 and 1395hh.

SOURCE: 45 FR 42179, June 23, 1980, unless otherwise noted.

Subpart A—Scope, Definitions, and General Provisions

§ 421.1 Basis, applicability, and scope.

(a) *Basis*. This part is based on the provisions of the following sections of the Act:

Section 1124—Requirements for disclosure of certain information.

Sections 1816 and 1842—Provisions relating to the administration of Parts A and B.

Section 1893—Requirements for protecting the integrity of the Medicare program.

(b) *Applicability*. The provisions of this part apply to agreements with Part A (Hospital Insurance) fiscal intermediaries that received awards under sections 1816 or 1842 of the Act prior to October 1, 2005, contracts with Part B (Supplementary Medical Insurance) carriers that received awards under sections 1816 or 1842 of the Act prior to October 1, 2005, and contracts with Medicare integrity program contractors that perform program integrity functions.

(c) *Scope*. The scope of this part—

(1) Specifies that CMS may perform certain functions directly or by contract.

§ 421.3

42 CFR Ch. IV (10–1–24 Edition)

(2) Specifies criteria and standards CMS uses in evaluating the performance of fiscal intermediaries' successor entities and in assigning or reassigning a provider or providers to particular fiscal intermediaries.

(3) Provides the opportunity for a hearing for fiscal intermediaries and carriers affected by certain adverse actions.

(4) Provides adversely affected fiscal intermediaries an opportunity for judicial review of certain hearing decisions.

(5) Sets forth requirements related to contracts with Medicare integrity program contractors.

[72 FR 48886, Aug. 24, 2007]

§ 421.3 Definitions.

As used in this part—

Intermediary means an entity that has a contract with CMS (under statutory provisions in effect prior to October 1, 2005) to determine and make Medicare payments for Part A or Part B benefits payable on a cost basis (or under the prospective payment system for hospitals) and to perform other related functions. For purposes of applying the performance criteria in § 421.120 and the performance standards in § 421.122 and any adverse action resulting from that application, the term “intermediary” also means a Blue Cross plan that has entered into a sub-contract approved by CMS with the Blue Cross and Blue Shield Association to perform intermediary functions.

[71 FR 68228, Nov. 24, 2006]

§ 421.5 General provisions.

(a) *Competitive bidding not required for carriers.* CMS may enter into contracts with carriers, or with intermediaries to act as carriers in certain circumstances, without regard to section 3709 of the U.S. Revised Statutes or any other provision of law that requires competitive bidding.

(b) *Indemnification of intermediaries and carriers.* Intermediaries and carriers act on behalf of CMS in carrying out certain administrative responsibilities that the law imposes. Accordingly, their agreements and contracts contain clauses providing for indemnification with respect to actions

taken on behalf of CMS and CMS is the real party of interest in any litigation involving the administration of the program.

(c) *Use of intermediaries to perform carrier functions.* CMS may contract with an intermediary to perform carrier functions with respect to services for which Part B payment is made to a provider.

(d) *Nonrenewal of agreement or contract.* Notwithstanding any of the provisions of this part, CMS has the authority not to renew an agreement or contract when its term expires.

(e) *Intermediary availability in an area.* For more effective and efficient administration of the program, CMS retains the right to expand or diminish the geographical area in which an intermediary is available to serve providers.

(f) *Provision for automatic renewal.* Agreements and contracts under this part may contain automatic renewal clauses for continuation from term to term unless either party gives notice, within timeframes specified in the agreement or contract, of its intention not to renew.

[45 FR 42179, June 23, 1980, as amended at 54 FR 4026, Jan. 27, 1989]

Subpart B—Intermediaries

§ 421.100 Intermediary functions.

An agreement between CMS and an intermediary specifies the functions to be performed by the intermediary.

(a) *Mandatory functions.* The contract must include the following functions:

(1) Determining the amount of payments to be made to providers for covered services furnished to Medicare beneficiaries.

(2) Making the payments.

(b) *Additional functions.* The contract may include any or all of the following functions:

(1) Any or all of the program integrity functions described in § 421.304, provided the intermediary is continuing those functions under an agreement entered into under section 1816 of the Act that was in effect on August 21, 1996, and they do not duplicate work being performed under a Medicare integrity program contract.

(2) Undertaking to adjust incorrect payments and recover overpayments

when it is determined that an overpayment was made.

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

(4) Establishing and maintaining procedures as approved by CMS for the re-determination of payment determinations.

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

(6) Upon inquiry, assisting individuals for matters pertaining to an intermediary agreement.

(7) 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 an intermediary agreement.

(8) Undertaking other functions as mutually agreed to by CMS and the intermediary.

(c) *Dual intermediary responsibilities.* Regarding the responsibility for service to provider-based HHAs and provider-based hospices, where the HHA or the hospice and its parent provider will be served by different intermediaries, the designated regional intermediary will process bills, make coverage determinations, and make payments to the HHAs and the hospices. The intermediary or Medicare integrity program contractor serving the parent provider will perform all fiscal functions, including audits and settlement of the Medicare cost reports and the HHA and hospice supplement worksheets.

[72 FR 48886, Aug. 24, 2007]

§ 421.103 Payment to providers.

Providers are assigned to intermediaries in accordance with § 421.104. As the Medicare Administrative Contractors (MACs) are implemented, providers are reassigned from intermediaries to MACs in accordance with § 412.404 of this chapter.

[71 FR 68228, Nov. 24, 2006]

§ 421.104 Assignment of providers of services to intermediaries during transition to Medicare Administrative Contractors (MACs).

(a) Beginning October 1, 2005, CMS assigns providers of services and other entities that may bill Part A benefits to intermediaries in a manner that will best support the transition to Medicare Administrative Contractors (MACs) under section 1874A of the Act in accordance with subpart E of this part.

(b) These providers of services and other entities must continue to bill the intermediary that they were billing prior to October 1, 2005, until one of the following events occurs:

(1) The intermediary's agreement with CMS ends, and the provider or entity is directed by CMS to bill another CMS contractor.

(2) The provider or entity is assigned to a MAC that has begun to administer claims within the geographic locale of the provider or entity.

(3) CMS directs the provider or entity to begin billing another CMS contractor in order to support the implementation of MACs under section 1874A of the Act and subpart E of this part.

(c) New providers of services and new entities will be assigned to the intermediary serving their geographic locale if no MAC has begun to administer Medicare claims in the locale. These providers or entities must continue to bill the intermediary until one of the events in paragraph (b) of this section occurs.

(d) Providers or entities will only be granted exceptions to the provisions of paragraphs (b) or (c) of this section if CMS deems the exception to be in the compelling interest of the Medicare program.

(e) CMS will notify the provider or entity, the outgoing intermediary, and the newly assigned intermediary of assignment or reassignment decisions.

[71 FR 68228, Nov. 24, 2006]

§ 421.110 Requirements for approval of an agreement.

Before entering into or renewing an intermediary agreement, CMS will—

(a) Determine that to do so is consistent with the effective and efficient administration of the Medicare program;

§ 421.112

(b) Review the performance of the intermediary as measured by the criteria (§ 421.120) and standards (§ 421.122); and

(c) Determine that the intermediary or prospective intermediary—

(1) Is willing and able to assist providers in the application of safeguards against unnecessary utilization of services;

(2) Meets all solvency and financial responsibility requirements imposed by the statutes and regulatory authorities of the State or States in which it, or any subcontractor performing some or all of its functions, would serve;

(3) Has the overall resources and experience to administer its responsibilities under the Medicare program and has an existing operational, statistical, and recordkeeping capacity to carry out the additional program responsibilities it proposes to assume. CMS will presume that an intermediary or prospective intermediary meets this requirement if it has at least 5 years experience in paying for or reimbursing the cost of health services;

(4) Will serve a sufficient number of providers to permit a finding of effective and efficient administration. Under this criterion no intermediary or prospective intermediary shall be found to be not efficient or effective solely on the grounds that it serves only providers located in a single State;

(5) Has acted in good faith to achieve effective cooperation with the providers it will service and with the physicians and medical societies in the area;

(6) Has established a record of integrity and satisfactory service to the public; and

(7) Has an affirmative equal employment opportunity program that complies with the fair employment provisions of the Civil Rights Act of 1964 and Executive Order 11246, as amended.

§ 421.112 Considerations relating to the effective and efficient administration of the program.

(a) In order to accomplish the most effective and efficient administration of the Medicare program, the Secretary may make determinations with respect to the termination of an intermediary

42 CFR Ch. IV (10–1–24 Edition)

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 will 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.

[45 FR 42179, June 23, 1980, as amended at 59 FR 682, Jan. 6, 1994; 71 FR 68229, Nov. 24, 2006]

§ 421.114 Assignment and reassignment of providers by CMS.

CMS may assign or reassign any provider to any intermediary if it determines that the assignment or reassignment will be in the best interests of the Medicare program.

[71 FR 68229, Nov. 24, 2006]

§ 421.120 Performance criteria.

(a) *Application of performance criteria.* As part of the intermediary evaluations authorized by section 1816(f) of

the Act, CMS periodically assesses the performance of intermediaries in their Medicare operations using performance criteria. The criteria measure and evaluate intermediary performance of functional responsibilities such as—

(1) Correct coverage and payment determinations;

(2) Responsiveness to beneficiary concerns; and

(3) Proper management of administrative funds.

(b) *Basis for criteria.* CMS will base the performance criteria on—

(1) Nationwide intermediary experience;

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

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

(c) *Publication of criteria.* The development and revision of criteria for evaluating intermediary performance is a continuing process. Therefore, before the beginning of each evaluation period, CMS will publish the performance criteria as a notice in the FEDERAL REGISTER.

[48 FR 7178, Feb. 18, 1983]

§ 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

evaluating intermediary performance is a continuing process. Therefore, 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 standards as part of the FEDERAL REGISTER notice describing the performance criteria issued under § 421.120(c). 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 intermediaries for the new criteria and standards begins after the publication of the notice.

[59 FR 682, Jan. 6, 1994]

§ 421.124 Intermediary's failure to perform efficiently and effectively.

(a) Failure by an intermediary to meet, or to demonstrate the capacity to meet, the criteria or standards specified in §§ 421.120 and 421.122 may be grounds for adverse action by the Secretary or by CMS, such as reassignment of providers, offer of a short-term agreement, termination of a contract, or non-renewal of a contract. If an intermediary meets all criteria and standards in its overall performance, but does not meet them with respect to a specific provider or class of providers, CMS may reassign that provider or class of providers to another intermediary in accordance with § 421.114.

(b) In addition, notwithstanding whether an intermediary meets the criteria and standards, if the cost incurred by the intermediary to meet its 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—