

for Medicare payment under certain provider contracts, access by the Secretary, upon written request, and the Comptroller General, and their duly authorized representatives, to certain contracts for services and to books, documents, and records necessary to verify the costs of the services. The contracts affected are those between providers and their subcontractors, and between the subcontractors and organizations related to the subcontractor by control or common ownership. It also specifies the criteria by which HHS will determine whether to request access to books, documents, and records.

§ 420.301 Definitions.

For purposes of this subpart—

Books, documents, and records means all writings, recordings, transcriptions and tapes of any description necessary to verify the nature and extent of the costs of the services provided by the subcontractor.

Common ownership means that an individual or individuals possess significant ownership or equity in the subcontractor and the entity providing the services under the contract.

Contract for services means a contract through which a provider obtains the performance of an act or acts, as distinguished from supplies or equipment. It includes any contract for both goods and services to the extent the value or cost of the service component is \$10,000 or more within a 12-month period.

Control means that an individual or an organization has the power, directly or indirectly, significantly to influence or direct the actions of policies of an organization.

Provider means a hospital, skilled nursing facility, home health agency, hospice or comprehensive outpatient rehabilitation facility, or a related organization (as defined in §413.17 of this chapter) of any of these providers.

Related to the subcontractor means that the subcontractor is, to a significant extent, associated or affiliated with, owns, or is owned by, or has control of or is controlled by, the organization furnishing the services, facilities, or supplies.

Subcontractor means any entity, including an individual or individuals, that contracts with a provider to sup-

ply a service, either to the provider or directly to a beneficiary, for which Medicare reimburses the provider the cost of the service. This includes organizations related to the subcontractor that have a contract with the subcontractor for which the cost or value is \$10,000 or more in a 12-month period.

[47 FR 58267, Dec. 30, 1982, as amended at 49 FR 13703, Apr. 6, 1984; 51 FR 34833, Sept. 30, 1986]

§ 420.302 Requirement for access clause in contracts.

(a) *Applicability.* This subpart applies to contracts—

(1) Between a provider and a subcontractor and, where subject to section 1861(v)(1)(I)(ii) of the Act, between a subcontractor and an organization related to the subcontractor;

(2) Entered into or renewed after December 5, 1980; and

(3) For services the cost or value of which is \$10,000 or more over a 12-month period, including contracts for both goods and services in which the service component is worth \$10,000 or more over a 12-month period.

(b) *Requirement.* Any contract meeting the conditions of paragraph (a) of this section must include a clause that allows the Comptroller General of the United States, HHS, and their duly authorized representatives access to the subcontractor's contract, books, documents, and records until the expiration of four years after the services are furnished under the contract or subcontract. The access must be provided for in accordance with the provisions of this subpart. The clause must also allow similar access by HHS, the Comptroller General, and their duly authorized representatives to contracts subject to section 1861(v)(1)(I)(ii) of the Act between a subcontractor and organizations related to the subcontractor and to books, documents, and records.

(c) *Prohibition against Medicare reimbursement.* If a contract subject to the requirements of this subpart does not contain the clause required by paragraph (b) of this section, CMS will not reimburse the provider for the cost of the services furnished under the contract and will recoup any payments previously made for services under the contract. However, in order to avoid