

**§ 421.117 Designation of regional and alternative designated regional intermediaries for home health agencies and hospices.**

(a) This section is based on section 1816(e)(4) of the Social Security Act, which requires the Secretary to designate regional intermediaries for home health agencies (HHAs) other than hospital-based HHAs but permits him or her to designate regional intermediaries for hospital-based HHAs only if the designation meets promulgated criteria concerning administrative efficiency and effectiveness; on section 1816(e)(5) of the Social Security Act, which requires the Secretary to designate intermediaries for hospices; and on section 1874 of the Act, which permits CMS to contract with any organization for the purpose of making payments to any provider that elects to receive payment directly from CMS.

(b) CMS applies the following criteria to determine whether the assignment of hospital-based HHAs to designated regional intermediaries will result in the more effective and efficient administration of the Medicare program:

- (1) Uniform interpretation of Medicare rules;
- (2) Expertise in bill processing;
- (3) Control of administrative costs;
- (4) Ease of communication of program policy and issues to affected providers;
- (5) Ease of data collection;
- (6) Ease of CMS's monitoring of intermediary performance; and
- (7) Other criteria as the Secretary believes to be pertinent.

(c) Except as provided in paragraphs (e), (f), and (g) of this section, an HHA must receive payment through a regional intermediary designated by CMS.

(d) Except as provided in paragraphs (f) through (h) of this section, a hospice must receive payment for covered services furnished to Medicare beneficiaries through an intermediary designated by CMS.

(e) An HHA chain not desiring to receive payment from designated regional intermediaries may request service by one lead intermediary with the assistance of a local designated regional intermediary. Alternatively, the chain may request to be serviced by a

single intermediary. A lead, local, or a single intermediary must be an organization that is a designated regional intermediary. Any request made under this paragraph is evaluated by CMS in accordance with the criteria contained at § 421.106 of this subpart.

(f) An HHA or hospice not wishing to receive payment from a regional intermediary designated under paragraph (c) or (d) of this section may submit a request to the CMS Regional Office to receive payment through an alternative regional intermediary designated by CMS.

(g) Except as provided in paragraph (h) of this section, any request that an HHA or hospice may make to change from a designated regional intermediary to an alternative designated regional intermediary, in accordance with paragraph (f) of this section, is evaluated by CMS in accordance with the criteria set forth at § 421.106(b) of this subpart and must be filed within the timeframe established at § 421.106(a) of this subpart.

(h) *Exception:* An HHA or a hospice that, as of June 20, 1988 is receiving payment from a designated regional intermediary may, without regard to the limitations contained in § 421.106 of this subpart, continue to receive payment from that intermediary. It may do so even if that intermediary is not the designated regional intermediary or the alternative designated regional intermediary for the particular State in which the HHA or hospice is located.

[53 FR 17944, May 19, 1988]

**§ 421.118 Awarding of experimental contracts.**

Notwithstanding the provisions of §§ 421.103 and 421.104, CMS may award a fixed price or performance incentive contract under the experimental authority contained in 42 U.S.C. 1395b–1 for performance of any of the functions specified in § 421.100. Action taken by CMS under this paragraph is not subject to—

(a) The administrative and judicial review which would otherwise be available under § 421.128; or

(b) Performance criteria and performance standards review as provided for in §§ 421.120 and 421.122.

[45 FR 42179, June 23, 1980, as amended at 59 FR 682, Jan. 6, 1994]

**§ 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