

§ 421.5

home health agencies and of designating intermediaries for hospices under § 421.117 as well as for applying the performance criteria in § 421.120 and the performance standards in § 421.122 and any adverse action resulting from such application, the term intermediary also means a Blue Cross Plan which has entered into a subcontract approved by CMS with the Blue Cross and Blue Shield Association to perform intermediary functions.

[59 FR 681, Jan. 6, 1994]

§ 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

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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, which must include, but are not necessarily limited to, the following:

(a) *Coverage.* (1) The intermediary ensures that it makes payments only for services that are:

(i) Furnished to Medicare beneficiaries;

(ii) Covered under Medicare; and

(iii) In accordance with QIO determinations when they are services for which the QIO has assumed review responsibility under its contract with CMS.

(2) The intermediary takes appropriate action to reject or adjust the claim if—

(i) The intermediary or the QIO determines that the services furnished or proposed to be furnished were not reasonable, not medically necessary, or not furnished in the most appropriate setting; or

(ii) The intermediary determines that the claim does not properly reflect the kind and amount of services furnished.

(b) *Fiscal management.* The intermediary must receive, disburse, and account for funds in making Medicare payments.

(c) *Provider audits.* The intermediary must audit the records of providers of services as necessary to assure proper payments.

(d) *Utilization patterns.* The intermediary must assist providers to—

(1) Develop procedures relating to utilization practices;

(2) Make studies of the effectiveness of those procedures and recommend methods to improve them;

(3) Evaluate the results of utilization review activity; and

(4) Assist in the application of safeguards against unnecessary utilization of services.

(e) *Resolution of cost report disputes.* The intermediary must establish and