

(7) Provide that the contractor maintains an appropriate record system for services to enrolled recipients;

(8) Provide that the contractor safeguards information about recipients as required by part 431, subpart F of this chapter;

(9) Specify any activities to be performed by the contractor that are related to third party liability requirements in part 433, subpart D of this chapter;

(10) Specify which functions may be subcontracted; and

(11) Provide that any subcontracts meet the requirements of paragraph (b) of this section.

(b) *Subcontracts.* All subcontracts must be in writing and fulfill the requirements of this part that are appropriate to the service or activity delegated under the subcontract.

(c) *Continued responsibility of contractor.* No subcontract terminates the legal responsibility of the contractor to the agency to assure that all activities under the contract are carried out.

[48 FR 54020, Nov. 30, 1983, as amended at 67 FR 41095, June 14, 2002]

### Subpart B—Contracts with Fiscal Agents and Private Nonmedical Institutions

#### § 434.10 Contracts with fiscal agents.

Contracts with fiscal agents must—

- (a) Meet the requirements of § 434.6;
- (b) Include termination procedures that require the contractors to supply promptly all material necessary for continued operation of payment and related systems. This material includes—
  - (1) Computer programs;
  - (2) Data files;
  - (3) User and operation manuals, and other documentation;
  - (4) System and program documentation; and
  - (5) Training programs for Medicaid agency staff, their agents or designated representatives in the operation and maintenance of the system;
- (c) Offer to the State one or both of the following options, if the fiscal agent or the fiscal agent's subcontractor has a proprietary right to material specified in paragraph (b) of this section:

(1) Purchasing the material; or

(2) Purchasing the use of the material through leasing or other means; and

(d) State that payment to providers will be made in accordance with part 447 of this chapter.

#### § 434.12 Contracts with private non-medical institutions.

Contracts with private nonmedical institutions must—

- (a) Meet the requirements of § 434.6;
- (b) Specify a capitation fee based on the cost of the services provided, in accordance with the reimbursement requirements prescribed in part 447 of this chapter; and
- (c) Specify when the capitation fee must be paid.

#### § 434.14 [Reserved]

### Subpart C [Reserved]

### Subpart D—Contracts With Health Insuring Organizations

#### § 434.40 Contract requirements.

(a) Contracts with health insuring organizations that are not subject to the requirements in section 1903(m)(2)(A) must:

- (1) Meet the general requirements for all contracts and subcontracts specified in § 434.6;
- (2) Specify that the contractor assumes at least part of the underwriting risk and:
  - (i) If the contractor assumes the full underwriting risk, specify that payment of the capitation fees to the contractor during the contract period constitutes full payment by the agency for the cost of medical services provided under the contract;
  - (ii) If the contractor assumes less than the full underwriting risk, specify how the risk is apportioned between the agency and the contractor;
- (3) Specify whether the contractor returns to the agency part of any savings remaining after the allowable costs are deducted from the capitations fees, and if savings are returned, the apportionment between agency and the contractor; and