

(2) Through an intermediary, when both HCFA and the intermediary consent.

(b) Whenever HCFA determines it appropriate, it may contract with any organization (including an intermediary with which HCFA has previously entered into an agreement under § 421.105 and § 421.110 or designated as a regional or alternative regional intermediary under § 421.117) for the purposes of making payments to any provider that does not elect to receive payment from an intermediary.

[49 FR 3659, Jan. 30, 1984; 49 FR 9174, Mar. 12, 1984]

§ 421.104 Nominations for intermediary.

(a) *Nomination by groups or associations of providers.* (1) An association of providers, except for hospices, may nominate an organization or agency to serve as intermediary for its members.

(2) The nomination is not binding on any member of the association if it notifies HCFA of its nonconcurrence with the nomination.

(3) The nomination must be made in writing, to HCFA, and must—

(i) Identify the proposed intermediary by giving the complete name and address;

(ii) Include, or furnish as an attachment, the name, address, and bed capacity (or patient care capacity in the case of home health agencies) of each member of the association;

(iii) List the members that have concurred in the nomination of the proposed intermediary; and

(iv) Be signed by an authorized representative of the association.

(b) *Action by nonmembers or non-concurring members.* Providers that non-concur in their association's nomination, or are not members of an association, may—

(1) Form a group of 2 or more providers for the specific purpose of nominating an intermediary, in accordance with provisions of paragraph (a) of this section;

(2) Elect to receive payments from a fiscal intermediary with which HCFA already has an agreement, if HCFA and the intermediary agree to it (see § 421.106); or

(3) Elect to receive payment from HCFA as provided in § 421.103.

(c) HCFA is not required to enter into an agreement with a proposed intermediary solely because it has been nominated.

[45 FR 42179, June 23, 1980, as amended at 48 FR 56035, Dec. 16, 1983; 49 FR 3659, Jan. 30, 1984]

§ 421.105 Notification of action on nomination.

(a) HCFA will send, to each member of a nominating association or group, written notice of a decision to enter into or not enter into an agreement with the nominated organization or agency.

(b) Any member of a group or association having more than one nominated intermediary approved by HCFA to act on its behalf must withdraw its nomination from all but one or exercise the option provided in § 421.103(a), subject to § 421.103(b), to receive payment directly from HCFA.

[45 FR 42179, June 23, 1980, as amended at 49 FR 3660, Jan. 30, 1984]

§ 421.106 Change to another intermediary or to direct payment.

(a) Any provider may request a change of intermediary, or except for a hospice, that it be paid directly by HCFA, by—

(1) Giving HCFA written notice of its desire at least 120 days before the end of its current fiscal year; and

(2) Concurrently giving written notice to its intermediary.

(b) If HCFA finds the change is consistent with effective and efficient administration of the program and approves the request under paragraph (a) of this section, it will notify the provider, the outgoing intermediary, and the newly-elected intermediary (if any) that the change will be effective on the first day following the close of the fiscal year in which the request was filed.

[45 FR 42179, June 23, 1980, as amended at 49 FR 56036, Dec. 16, 1983; 49 FR 3660, Jan. 30, 1984]

§ 421.110 Requirements for approval of an agreement.

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

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

(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. HCFA 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, determinations may be made by the Secretary with respect to the termination of an intermediary agreement, or by HCFA with respect to the—

(1) Renewal of an intermediary agreement (§ 421.110);

(2) Assignment or reassignment of providers to an intermediary (§ 421.114); or

(3) Designation of a regional or national intermediary to serve a class of providers (§ 421.116).

(b) When taking the actions listed in paragraph (a), the Secretary or HCFA will consider the performance of the individual intermediary in its Medicare operations using the factors contained in the performance criteria (§ 421.120) and performance standards (§ 421.122).

(c) In addition, when taking the actions listed in paragraph (a) of this section, the Secretary or HCFA 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]