

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 HCFA Regional Office to receive payment through an alternative regional intermediary designated by HCFA.

(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 HCFA 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, HCFA 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 HCFA 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, HCFA 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.* HCFA will base the performance criteria on—

(1) Nationwide intermediary experience;

(2) Changes in intermediary operations due to fiscal constraints; and

(3) HCFA'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, HCFA 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), HCFA 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, HCFA 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, HCFA publishes the performance standards as part of the FEDERAL REGISTER notice describing the performance criteria issued under § 421.120(c). HCFA may not necessarily publish the criteria and standards every year. HCFA 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 HCFA, 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, HCFA 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 HCFA finds to be reasonable and adequate to meet the cost which must be incurred by an efficiently and economically operated

intermediary, those high costs may also be grounds for adverse action.

[59 FR 682, Jan. 6, 1994]

§ 421.126 Termination of agreements.

(a) *Termination by intermediary.* An intermediary may terminate its agreement at any time by—

(1) Giving written notice of its intention to HCFA and to the providers it services at least 180 days before its intended termination date; and

(2) Giving public notice of its intention by publishing a statement of the effective date of termination at least 60 days before that date. Publication must be in a newspaper of general circulation in each community served by the intermediary.

(b) *Termination by the Secretary, and right of appeal.* (1) The Secretary may terminate an agreement if—

(i) The intermediary fails to comply with the requirements of this subpart;

(ii) The intermediary fails to meet the criteria or standards specified in §§ 421.120 and 421.122; or

(iii) HCFA has reassigned, under § 421.114 or § 421.116, all of the providers assigned to the intermediary.

(2) If the Secretary decides to terminate an agreement, he or she will offer the intermediary an opportunity for a hearing, in accordance with § 421.128.

(3) If the intermediary does not request a hearing, or if the hearing decision affirms the Secretary’s decision, the Secretary will provide reasonable notice of the effective date of termination to—

(i) The intermediary;

(ii) The providers served by the intermediary; and

(iii) The general public.

(4) The providers served by the intermediary will be given the opportunity to nominate another intermediary, in accordance with § 421.104.

§ 421.128 Intermediary’s opportunity for hearing and right to judicial review.

(a) *Basis for appeal.* An intermediary adversely affected by any of the following actions shall be granted an opportunity for a hearing:

(1) Assignment or reassignment of providers to another intermediary.