

carrier's performance of its functions under its contract. Evaluations of Medicare fee-for-service contractor performance need not be limited to the current FY, other fixed term basis, or contract term. We may evaluate performance using a timeframe that does not mirror the FY. The evaluation of carrier performance is part of our contract management process.

C. Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Regional Carriers

In accordance with section 1834(a)(12) of the Act, we have entered into contracts with four DMEPOS regional carriers to perform all of the duties associated with the processing of claims for DMEPOS, under Part B of the Medicare program. These DMEPOS regional carriers process claims based on a Medicare beneficiary's principal residence by State. Section 1842(a) of the Act authorizes contracts with carriers for the payment of Part B claims for Medicare covered services and items. Section 1842(b)(2) of the Act requires us to publish in the **Federal Register** criteria and standards for the efficient and effective performance of carrier contract obligations. Evaluation of Medicare fee-for-service contractor performance need not be limited to the current FY, other fixed term basis, or contract term. We may evaluate performance using a timeframe that does not mirror the FY. The evaluation of DMEPOS regional carrier performance is part of our contract management process.

D. Development and Publication of Criteria and Standards

In addition to the statutory requirements, § 421.120 and § 421.122 provide for publication of a **Federal Register** notice to announce criteria and standards for intermediaries before implementation. Section 421.201 provides for publication of a **Federal Register** notice to announce criteria and standards for carriers before implementation. The current criteria and standards for intermediaries, carriers, and DMEPOS regional carriers were published in the **Federal Register** on December 28, 2001 at 66 FR 67257.

To the extent possible, we make every effort to publish the criteria and standards before the beginning of the Federal FY, which is October 1. If we do not publish a **Federal Register** notice before the new FY begins, readers may presume that until and unless notified otherwise, the criteria and standards that were in effect for the previous FY remain in effect.

In those instances in which we are unable to meet our goal of publishing the subject **Federal Register** notice before the beginning of the FY, we may publish the criteria and standards notice at any subsequent time during the year. If we publish a notice in this manner, the evaluation period for the criteria and standards that are the subject of the notice will be effective on the first day of the first month following publication. Any revised criteria and standards will measure performance prospectively; that is, we will not apply new measurements to assess performance on a retroactive basis.

It is not our intention to revise the criteria and standards that will be used during the evaluation period once this information has been published in a **Federal Register** notice. However, on occasion, either because of administrative action or congressional mandate, there may be a need for changes that have a direct impact on the criteria and standards previously published, or that require the addition of new criteria or standards, or that cause the deletion of previously published criteria and standards. If we must make these changes, we will publish an amended **Federal Register** notice before implementation of the changes. In all instances, necessary manual issuances will be published to ensure that the criteria and standards are applied uniformly and accurately. Also, as in previous years, this **Federal Register** notice will be republished and the effective date revised if changes are warranted as a result of the public comments received on the criteria and standards.

II. Analysis of and Response to Public Comments Received on FY 2001 Criteria and Standards

In response to the December 28, 2001 **Federal Register** general notice with comment, we received comments from five entities. We reviewed all comments, but none necessitated our reissuance of the FY 2002 criteria and standards. Not all comments submitted pertained specifically to the FY 2002 criteria and standards. We advised Medicare program components of the concerns as appropriate. When warranted, we have incorporated revisions in this **Federal Register** notice. We are responding to the following performance evaluation comments:

Comment: A commenter advised that we have established an "acceptable reversal rate" of intermediary reconsideration determinations by Administrative Law Judges (ALJs), but that we have not developed an

acceptable reversal rate for DMEPOS regional carriers.

Response: Section 1816(f)(2) of the Act requires that we develop a standard to evaluate the extent to which intermediary determinations are reversed on appeal. This section of the Act applies only to intermediaries. The statute does not include a similar requirement for carriers and DMEPOS regional carriers, who by law employ a different process in reviewing Part B claims, including an additional level of contractor appeal known as the fair hearing. While there is no similar mandate under the Part B program for carriers or DMEPOS regional carriers, our reviewers routinely evaluate the accuracy of appeals decisions when they conduct a CPE review of a contractor's appeals operation. This review includes an evaluation of reversals both at the fair hearing and the ALJ level. We believe that this process adequately identifies problems with the accuracy of carrier and DMERC appeals decisions.

Comment: A commenter advised that intermediaries must be given specific customer service performance objectives, and providers must be allowed to influence those objectives and to participate directly in the evaluations of contractor performance. The commenter considers provider input more critical if the Administration continues to support contractor reform.

Response: Both intermediaries and carriers are required to have Provider Communications Advisory Groups which are comprised of representatives from the various Medicare provider types, such as hospitals, home health agencies, skilled nursing facilities, and physicians. These groups are to have meetings on a quarterly basis during which the provider representatives give contractors feedback about education and customer service needs and how well these needs are being met. The contractors report the minutes of these meetings to CMS's headquarters in quarterly update reports. We factor in this feedback when setting customer service standards for the contractor. We notify contractors of specific customer service performance standards by means of administrative directives. However, because such standards are not mandated by law or court decision, we do not specify them in this notice.

Currently we evaluate contractor customer service by verifying implementation and execution of administrative directives, reviewing responses to correspondence, monitoring telephone responses, and reviewing educational materials distributed to providers. As we prepare