

(b) *Conditions that enrollment brokers must meet.* State expenditures for the use of enrollment brokers are considered necessary for the proper and efficient operation of the State plan and thus eligible for FFP only if the broker and its subcontractors meet the following conditions:

(1) *Independence.* The broker and its subcontractors are independent of any MCO, PIHP, PAHP, PCCM, or other health care provider in the State in which they provide enrollment services. A broker or subcontractor is not considered “independent” if it—

(i) Is an MCO, PIHP, PAHP, PCCM or other health care provider in the State;

(ii) Is owned or controlled by an MCO, PIHP, PAHP, PCCM, or other health care provider in the State; or

(iii) Owns or controls an MCO, PIHP, PAHP, PCCM or other health care provider in the State.

(2) *Freedom from conflict of interest.* The broker and its subcontractor are free from conflict of interest. A broker or subcontractor is not considered free from conflict of interest if any person who is the owner, employee, or consultant of the broker or subcontractor or has any contract with them—

(i) Has any direct or indirect financial interest in any entity or health care provider that furnishes services in the State in which the broker or subcontractor provides enrollment services;

(ii) Has been excluded from participation under title XVIII or XIX of the Act;

(iii) Has been debarred by any Federal agency; or

(iv) Has been, or is now, subject to civil money penalties under the Act.

(3) *Approval.* The initial contract or memorandum of agreement (MOA) for services performed by the broker has been reviewed and approved by CMS.

[67 FR 41095, June 14, 2002; 67 FR 65505, Oct. 25, 2002]

**§ 438.812 Costs under risk and nonrisk contracts.**

(a) Under a risk contract, the total amount the State agency pays for carrying out the contract provisions is a medical assistance cost.

(b) Under a nonrisk contract—

(1) The amount the State agency pays for the furnishing of medical services to eligible recipients is a medical assistance cost; and

(2) The amount the State agency pays for the contractor’s performance of other functions is an administrative cost.

**PART 440—SERVICES: GENERAL PROVISIONS**

**Subpart A—Definitions**

Sec.

440.1 Basis and purpose.

440.2 Specific definitions; definitions of services for FFP purposes.

440.10 Inpatient hospital services, other than services in an institution for mental diseases.

440.20 Outpatient hospital services and rural health clinic services.

440.30 Other laboratory and X-ray services.

440.40 Nursing facility services for individuals age 21 or older (other than services in an institution for mental disease), EPSDT, and family planning services and supplies.

440.50 Physicians’ services and medical and surgical services of a dentist.

440.60 Medical or other remedial care provided by licensed practitioners.

440.70 Home health services.

440.80 Private duty nursing services.

440.90 Clinic services.

440.100 Dental services.

440.110 Physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders.

440.120 Prescribed drugs, dentures, prosthetic devices, and eyeglasses.

440.130 Diagnostic, screening, preventive, and rehabilitative services.

440.140 Inpatient hospital services, nursing facility services, and intermediate care facility services for individuals age 65 or older in institutions for mental diseases.

440.150 Intermediate care facility (ICF/MR) services.

440.155 Nursing facility services, other than in institutions for mental diseases.

440.160 Inpatient psychiatric services for individuals under age 21.

440.165 Nurse–midwife services.

440.166 Nurse practitioner services.

440.167 Personal care services.

440.168 Primary care case management services.

440.170 Any other medical or remedial care recognized under State law and specified by the Secretary.

440.180 Home or community–based services.

440.181 Home and community–based services for individuals age 65 or older.