

§ 405.1831

(ii) The specific matter was timely raised in an initial request for an intermediary hearing filed in accordance with § 405.1811(b) of this subpart or in a timely request to add issues to an appeal submitted in accordance with § 405.1811(c) of this subpart.

[39 FR 34515, Sept. 26, 1974. Redesignated at 42 FR 52826, Sept. 30, 1977, as amended at 73 FR 30247, May 23, 2008]

§ 405.1831 Intermediary hearing decision.

(a) If the intermediary hearing officer(s) finds jurisdiction (as described in § 405.1814(a) of this subpart) and conducts a hearing, the intermediary hearing officer(s) must promptly issue a written hearing decision.

(b) The intermediary hearing decision must be based on the evidence from the intermediary hearing (as described in § 405.1823 of this subpart) and other evidence as may be included in the record (as described in § 405.1827 of this subpart).

(c) The decision must include findings of fact and conclusions of law on jurisdictional issues (as described in § 405.1814(c)(1) of this subpart) and on the merits of the provider's reimbursement claims, and include appropriate citations to the record evidence and to the applicable law, regulations, CMS Rulings, and other interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice established by CMS.

(d) A copy of the decision must be mailed promptly to the intermediary, to each party and to the appropriate component of CMS (which currently is the Center for Medicare Management).

(e) When the intermediary's denial of the relief that the provider seeks before the intermediary hearing officer(s) was based on procedural grounds (for example, the alleged failure of the provider to satisfy a time limit), or was based on the alleged failure to supply adequate documentation to support the provider's claim, and the intermediary hearing officer(s) rule(s) that the basis of the intermediary's denial is invalid, the intermediary hearing officer(s) remands to the intermediary for the

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intermediary to make a determination on the merits of the provider's claim.

[73 FR 30248, May 23, 2008; 73 FR 49356, Aug. 21, 2008]

§ 405.1833 Effect of intermediary hearing decision.

An intermediary hearing decision issued in accordance with § 405.1831 of this subpart is final and binding on all parties to the intermediary hearing and on the intermediary, unless the hearing decision is reviewed by a CMS reviewing official in accordance with § 405.1834 of this subpart or reopened and revised by the intermediary hearing officer(s) in accordance with § 405.1885 through § 405.1889 of this subpart. Final intermediary hearing decisions are subject to the provisions of § 405.1803(d) of this subpart.

[73 FR 30248, May 23, 2008; 73 FR 49356, Aug. 21, 2008]

§ 405.1834 CMS reviewing official procedure.

(a) *Scope.* A provider that is a party to, and dissatisfied with, a final decision by the intermediary hearing officer(s), upon submitting a request that meets the requirements of paragraph (c) of this section, is entitled to further administrative review of the decision, or the decision may be reviewed at the discretion of the Administrator. No other individual, entity, or party has the right to the review. The review is conducted on behalf of the Administrator by a designated CMS reviewing official who considers whether the decision of the intermediary hearing officer(s) is consistent with the controlling legal authority (as described in § 405.1834(e)(1) of this subpart) and the evidence in the record. Based on the review, the CMS reviewing official issues a decision on behalf of the Administrator.

(b) *General rules.* (1) A CMS reviewing official may immediately review any final decision of the intermediary hearing officer(s) as specified in paragraph (b)(2) of this section.

(i) Nonfinal decisions and other nonfinal actions by the intermediary hearing officer(s) are not immediately reviewable, except as provided in paragraph (b)(3) of this section.

(ii) The CMS reviewing official exercises this review authority in response to a request from a provider party to the appeal that meets the requirements of paragraph (c) of this section or may exercise his or her discretion to take own motion review.

(2) A CMS reviewing official may immediately review the following:

(i) Any final jurisdictional dismissal decision by the intermediary hearing officer(s), including any finding that the provider failed to demonstrate good cause for extending the time in which to request a hearing (as described in §§ 405.1813(e)(1) and 405.1814(c)(3) of this subpart).

(ii) Any final intermediary hearing decision (as described in § 405.1831 of this subpart).

(3) Nonfinal decisions and other nonfinal actions by the intermediary hearing officer(s) are not subject to the CMS reviewing official procedure until the intermediary hearing officer(s) issues a final decision as specified in paragraph (b)(2) of this section (as described in §§ 405.1813(e)(2), 405.1814(c) and (d), and 405.1821(d)(1) of this subpart), except that the CMS reviewing official may immediately review a ruling, authorizing discovery or disclosure of a matter, where there is a claim of privilege or other protection from disclosure such as case preparation, confidentiality, or undue burden.

(4) In order to facilitate the Administrator's exercise of this review authority, the intermediary hearing officer(s) must promptly send copies of any decision specified in paragraph (b)(2) of this section or in § 405.1821(d)(2) of this subpart to the appropriate component of CMS (currently the Center for Medicare Management).

(i) All requests for review by a CMS reviewing official and all written submissions to a CMS reviewing official under paragraphs (c) and (d) of this section also must be sent to the appropriate component of CMS.

(ii) The appropriate CMS component examines each intermediary hearing officer decision that is reviewable under paragraph (b)(2) of this section or § 405.1821(d)(2) of this subpart, along with any review requests and any other submissions made by a party in accordance with the provisions of this section,

in order to assist the Administrator's exercise of this review authority.

(c) *Request for review.* (1) A provider's request for review by a CMS reviewing official is granted if—

(i) The date of receipt by the appropriate CMS component of the review request is no later than 60 days after the date of receipt by the provider of the intermediary hearing officer decision; or

(ii) The request seeks review of a decision listed in paragraph (b)(2) of this section, and the provider complies with the requirements of paragraph (c)(2) of this section.

(2) The provider must submit its request for review in writing, attach a copy of the intermediary decision for which it seeks review and include a brief description of all of the following:

(i) Those aspects of the intermediary hearing officer decision with which the provider is dissatisfied.

(ii) The reasons for the provider's dissatisfaction.

(iii) Any argument or record evidence the provider believes supports its position.

(iv) Any additional, extra-record evidence relied on by the provider, along with a demonstration that such evidence was improperly excluded from the intermediary hearing (as described in § 405.1823 of this subpart).

(3) A provider request for immediate review of an intermediary hearing officer ruling authorizing discovery or disclosure in accordance with paragraph (b)(3) of this section must—

(i) Be made as soon as practicable after the ruling is made, but in no event later than 5 business days after the date it received notice of the ruling; and

(ii) State the reason(s) why the ruling is in error and the potential harm that may be caused if immediate review is not granted.

(d) *Own motion review.* (1) The Administrator has discretion to take own motion review of an intermediary hearing officer decision (regardless of whether the decision was favorable or unfavorable to the provider) or other reviewable action.

(2) In order to exercise this authority, the CMS reviewing official must, no later than 60 days after the date of

the intermediary hearing officer's decision, notify the parties and the intermediary that he or she intends to review the intermediary hearing officer decision or other reviewable action.

(3) In the notice, the CMS reviewing official identifies with particularity the issues that are to be reviewed, and gives each party (as described in § 405.1815 of this subpart) and affected nonparty a reasonable period to comment on the issues through a written submission complying with paragraph (c)(2) of this section.

(e) *Review procedure.* (1) In reviewing an intermediary hearing officer decision specified in paragraph (b)(2) of this section, the CMS reviewing official must—

(i) Comply with all applicable law, regulations, and CMS Rulings (as described in § 401.108 of this chapter), and afford great weight to other interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice established by CMS;

(ii) Subject to paragraph (e)(1)(iii) of this section, limit the review to the record of the proceedings before the intermediary hearing officer(s) (as described in § 405.1827 of this subpart) and any written submissions by the parties under paragraphs (c)(2) or (d) of this section; and

(iii) Consider additional, extra-record evidence only if he or she determines that the evidence was improperly excluded from the intermediary hearing (as described in § 405.1823 of this subpart).

(2) Review of an intermediary decision specified in paragraph (b)(2) of this section is limited to a hearing on the written record in accordance with paragraph (e)(1)(ii) of this section, unless the CMS reviewing official determines that—

(i) Additional, extra-record evidence may be considered in accordance with paragraph (e)(1)(iii) of this section;

(ii) An oral hearing is necessary for consideration of the extra-record evidence; and

(iii) It is not necessary or appropriate to remand the matter to the intermediary hearing officer(s).

(3) Upon completion of the review of an intermediary hearing decision speci-

fied in paragraph (b)(2) of this section, the CMS reviewing official issues a written decision that affirms, reverses, modifies, or remands the intermediary hearing decision. A copy of the decision must be mailed promptly to each party, to the intermediary, and to the appropriate component of CMS (currently the Center for Medicare Management).

(f) *Effect of a decision: Remand.* (1) A decision of affirmation, reversal, or modification by the CMS reviewing official is final and binding on each party and the intermediary. No further review or appeal of a decision is available, but the decision may be reopened and revised by a CMS reviewing official in accordance with § 405.1885 through § 405.1889 of this subpart. Decisions of a CMS reviewing official are subject to the provisions of § 405.1803(d) of this subpart. A decision by a CMS reviewing official remanding an appeal to the intermediary hearing officer(s) for further proceedings under paragraph (f)(2) of this section is not a final decision.

(2) A remand to the intermediary hearing officer(s) by the CMS reviewing official must—

(i) Vacate the intermediary hearing officer decision;

(ii) Be governed by the same criteria that apply to remands by the Administrator to the Board under § 405.1875(f)(2) of this subpart, and require the intermediary hearing officer(s) to take specific actions on remand; and

(iii) Result in the intermediary hearing officer(s) taking the actions required on remand and issuing a new intermediary hearing decision in accordance with §§ 405.1831 and 405.1833 of this subpart.

[73 FR 30248, May 23, 2008; 73 FR 49356 Aug. 21, 2008]

§ 405.1835 Right to Board hearing; contents of, and adding issues to, hearing request.

(a) *Criteria.* A provider (but no other individual, entity, or party) has a right to a Board hearing, as a single provider appeal, for specific items claimed for a cost reporting period covered by an intermediary or Secretary determination, only if—

(1) The provider has preserved its right to claim dissatisfaction with the