

§ 498.5

42 CFR Ch. IV (10–1–20 Edition)

(2) CMS's review of the State's survey findings.

[59 FR 56252, Nov. 10, 1994]

§ 498.5 Appeal rights.

(a) *Appeal rights of prospective providers.* (1) Any prospective provider dissatisfied with an initial determination or revised initial determination that it does not qualify as a provider may request reconsideration in accordance with § 498.22(a).

(2) Any prospective provider dissatisfied with a reconsidered determination under paragraph (a)(1) of this section, or a revised reconsidered determination under § 498.30, is entitled to a hearing before an ALJ.

(b) *Appeal rights of providers.* Any provider dissatisfied with an initial determination to terminate its provider agreement is entitled to a hearing before an ALJ.

(c) *Appeal rights of providers and prospective providers.* Any provider or prospective provider dissatisfied with a hearing decision may request Departmental Appeals Board review, and has a right to seek judicial review of the Board's decision.

(d) *Appeal rights of prospective suppliers.* (1) Any prospective supplier dissatisfied with an initial determination or a revised initial determination that its services do not meet the conditions for coverage may request reconsideration in accordance with § 498.22(a).

(2) Any prospective supplier dissatisfied with a reconsidered determination under paragraph (d)(1) of this section, or a revised reconsidered determination under § 498.30, is entitled to a hearing before an ALJ.

(e) *Appeal rights of suppliers.* Any supplier dissatisfied with an initial determination that the services subject to the determination no longer meet the conditions for coverage, is entitled to a hearing before an ALJ.

(f) *Appeal rights of suppliers and prospective suppliers.* (1) Any supplier or prospective supplier dissatisfied with the hearing decision may request Departmental Appeals Board review of the ALJ's decision.

(2) A supplier or prospective supplier dissatisfied with an ALJ decision may request Board review, and has a right

to seek judicial review of the Board's decision.

(g) *Appeal rights for certain practitioners.* A physical therapist in independent practice or a chiropractor dissatisfied with a determination that he or she does not meet the requirements for coverage of his or her services has the same appeal rights as suppliers have under paragraphs (d), (e) and (f) of this section.

(h) *Appeal rights for nonparticipating hospitals that furnish emergency services.* A nonparticipating hospital dissatisfied with a determination or decision that it does not qualify to elect to claim payment for all emergency services furnished during a calendar year has the same appeal rights that providers have under paragraph (a), (b), and (c) of this section.

(i) *Appeal rights for suspended or excluded practitioners, providers, or suppliers.* (1) Any practitioner, provider, or supplier who has been suspended, or whose services have been excluded from coverage in accordance with § 498.3(c)(2), or has been sanctioned in accordance with § 498.3(c)(3), is entitled to a hearing before an ALJ.

(2) Any suspended or excluded practitioner, provider, or supplier dissatisfied with a hearing decision may request Departmental Appeals Board review and has a right to seek judicial review of the Board's decision by filing an action in Federal district court.

(j) *Appeal rights for Medicaid ICFs/IID terminated by CMS.* (1) Any Medicaid ICF/IID that has had its approval cancelled by CMS in accordance with § 498.3(b)(8) has a right to a hearing before an ALJ, to request Departmental Appeals Board review of the hearing decision, and to seek judicial review of the Board's decision.

(2) The Medicaid agreement remains in effect until the period for requesting a hearing has expired or, if the facility requests a hearing, until a hearing decision is issued, unless CMS—

(i) Makes a written determination that continuation of provider status for the SNF or ICF constitutes an immediate and serious threat to the health and safety of patients and specifies the reasons for that determination; and

(ii) Certifies that the facility has been notified of its deficiencies and has failed to correct them.

(k) *Appeal rights of NFs.* Under the circumstances specified in § 431.153 (g) and (h) of this chapter, an NF has a right to a hearing before an ALJ, to request Board review of the hearing decision, and to seek judicial review of the Board's decision.

(1) *Appeal rights related to provider enrollment.* (1) Any prospective provider, an existing provider, prospective supplier or existing supplier dissatisfied with an initial determination or revised initial determination related to the denial or revocation of Medicare billing privileges may request reconsideration in accordance with § 498.22(a).

(2) CMS, a CMS contractor, any prospective provider, an existing provider, prospective supplier, or existing supplier dissatisfied with a reconsidered determination under paragraph (1)(1) of this section, or a revised reconsidered determination under § 498.30, is entitled to a hearing before an ALJ.

(3) CMS, a CMS contractor, any prospective provider, an existing provider, prospective supplier, or existing supplier dissatisfied with a hearing decision may request Board review, and any prospective provider, an existing provider, prospective supplier, or existing supplier has a right to seek judicial review of the Board's decision.

(4) *Scope of review.* For appeals of denials based on § 424.530(a)(10) of this chapter related to temporary moratoria, the scope of review will be limited to whether the temporary moratorium applies to the provider or supplier appealing the denial. The agency's basis for imposing a temporary moratorium is not subject to review.

(m) *Appeal rights of an individual who is the administrator of a SNF or NF.* An individual who is the administrator of a SNF or NF who is dissatisfied with the decision of CMS to impose sanctions authorized under § 488.446 of this chapter is entitled to a hearing before an ALJ, to request Board review of the hearing decision, and to seek judicial review of the Board's decision.

(n) *Appeal rights of individuals and entities on preclusion list.* (1)(i) Any individual or entity that is dissatisfied with an initial determination or re-

vised initial determination that they are to be included on the preclusion list (as defined in § 422.2 or § 423.100 of this chapter) may request a reconsideration in accordance with § 498.22(a).

(ii)(A) If the individual's or entity's inclusion on the preclusion list is based on a Medicare revocation under § 424.535 of this chapter and the individual or entity receives contemporaneous notice of both actions, the individual or entity may request a joint reconsideration of both the preclusion list inclusion and the revocation in accordance with § 498.22(a).

(B) The individual or entity may not submit separate reconsideration requests under paragraph (n)(1)(ii)(A) of this section for inclusion on the preclusion list or a revocation if the individual or entity received contemporaneous notice of both actions.

(2) If CMS or the individual or entity under paragraph (n)(1) of this section is dissatisfied with a reconsidered determination under paragraph (n)(1) of this section, or a revised reconsidered determination under § 498.30, CMS or the individual or entity is entitled to a hearing before an ALJ.

(3) If CMS or the individual or entity under paragraph (n)(2) of this section is dissatisfied with a hearing decision as described in paragraph (n)(2) of this section, CMS or the individual or entity may request Board review and the individual or entity has a right to seek judicial review of the Board's decision.

[52 FR 22446, June 12, 1987, as amended at 57 FR 43925, Sept. 23, 1992; 59 FR 56252, Nov. 10, 1994; 61 FR 32350, June 24, 1996; 73 FR 36462, June 27, 2008; 76 FR 9512, Feb. 18, 2011; 76 FR 5970, Feb. 2, 2011; 78 FR 16805, Mar. 19, 2013; 79 FR 72533, Dec. 5, 2014; 83 FR 16757, Apr. 16, 2018; 84 FR 15844, Apr. 16, 2019]

§ 498.10 Appointment of representatives.

(a) An affected party may appoint as its representative anyone not disqualified or suspended from acting as a representative in proceedings before the Secretary or otherwise prohibited by law.

(b) If the representative appointed is not an attorney, the party must file written notice of the appointment with CMS, the ALJ, or the Departmental Appeals Board.