

## § 405.978

1862(a)(1)(A) of the Act, an explanation of the medical and scientific rationale for the decision;

(5) A summary of the rationale for the reconsideration.

(i) If the notice of redetermination indicated that specific documentation should be submitted with the reconsideration request, and the documentation was not submitted with the request for reconsideration, the summary must indicate how the missing documentation affected the reconsideration; and

(ii) The summary must also specify that, consistent with §§ 405.956(b)(8) and 405.966(b), all evidence, including evidence requested in the notice of redetermination, that is not submitted prior to the issuance of the reconsideration will not be considered at the OMHA level, unless the appellant demonstrates good cause as to why the evidence was not provided prior to the issuance of the QIC's reconsideration. This requirement does not apply to beneficiaries, unless the beneficiary is represented by a provider or supplier or to State Medicaid Agencies;

(6) Information concerning to the parties' right to an ALJ hearing, including the applicable amount in controversy requirement and aggregation provisions;

(7) A statement of whether the amount in controversy is estimated to meet or not meet the amount required for an ALJ hearing, if—

(i) The request for reconsideration was filed by a beneficiary who is not represented by a provider, supplier, or Medicaid State agency; and

(ii) The reconsideration decision is partially or fully unfavorable.

(8) A description of the procedures that a party must follow in order to obtain an ALJ hearing of an expedited reconsideration, including the time frame under which a request for an ALJ hearing must be filed;

(9) If appropriate, advice as to the requirements for use of the expedited access to judicial review process set forth in § 405.990;

(10) The procedures for obtaining additional information concerning the reconsideration, such as specific provisions of the policy, manual, or regula-

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tion used in making the reconsideration; and

(11) Any other requirements specified by CMS.

[70 FR 11472, Mar. 8, 2005, as amended at 82 FR 5108, Jan. 17, 2017]

### § 405.978 Effect of a reconsideration.

A reconsideration is binding on all parties, unless—

(a) An ALJ or attorney adjudicator decision is issued in accordance to a request for an ALJ hearing made in accordance with § 405.1014;

(b) A review entity issues a decision in accordance to a request for expedited access to judicial review under § 405.990; or

(c) The reconsideration is revised as a result of a reopening in accordance with § 405.980.

[70 FR 11472, Mar. 8, 2005, as amended at 74 FR 65334, Dec. 9, 2009; 82 FR 5108, Jan. 17, 2017]

## REOPENINGS

### § 405.980 Reopening of initial determinations, redeterminations, reconsiderations, decisions, and reviews.

(a) *General rules.* (1) A reopening is a remedial action taken to change a binding determination or decision that resulted in either an overpayment or underpayment, even though the binding determination or decision may have been correct at the time it was made based on the evidence of record. That action may be taken by—

(i) A contractor to revise the initial determination or redetermination;

(ii) A QIC to revise the reconsideration;

(iii) An ALJ or attorney adjudicator to revise his or her decision; or

(iv) The Council to revise the ALJ or attorney adjudicator decision, or its review decision.

(2) If a contractor issues a denial of a claim because it did not receive requested documentation during medical review and the party subsequently requests a redetermination, the contractor must process the request as a reopening.

(3) Notwithstanding paragraph (a)(4) of this section, a contractor must process clerical errors (which includes

minor errors and omissions) as reopenings, instead of as redeterminations as specified in § 405.940. If the contractor receives a request for reopening and disagrees that the issue is a clerical error, the contractor must dismiss the reopening request and advise the party of any appeal rights, provided the timeframe to request an appeal on the original denial has not expired. For purposes of this section, clerical error includes human or mechanical errors on the part of the party or the contractor such as—

- (i) Mathematical or computational mistakes;
- (ii) Inaccurate data entry; or
- (iii) Denials of claims as duplicates.

(4) When a party has filed a valid request for an appeal of an initial determination, redetermination, reconsideration, ALJ or attorney adjudicator decision, or Council review, no adjudicator has jurisdiction to reopen an issue on a claim that is under appeal until all appeal rights for that issue are exhausted. Once the appeal rights for the issue have been exhausted, the contractor, QIC, ALJ or attorney adjudicator, or Council may reopen as set forth in this section.

(5) The contractor's, QIC's, ALJ's or attorney adjudicator's, or Council's decision on whether to reopen is binding and not subject to appeal.

(6) A determination under the Medicare secondary payer provisions of section 1862(b) of the Act that Medicare has an MSP recovery claim for services or items that were already reimbursed by the Medicare program is not a reopening, except where the recovery claim is based upon a provider's or supplier's failure to demonstrate that it filed a proper claim as defined in part 411 of this chapter.

(b) *Time frames and requirements for reopening initial determinations and redeterminations initiated by a contractor.* A contractor may reopen an initial determination or redetermination on its own motion—

(1) Within 1 year from the date of the initial determination or redetermination for any reason.

(2) Within 4 years from the date of the initial determination or redetermination for good cause as defined in § 405.986.

(3) At any time if there exists reliable evidence as defined in § 405.902 that the initial determination was procured by fraud or similar fault as defined in § 405.902.

(4) At anytime if the initial determination is unfavorable, in whole or in part, to the party thereto, but only for the purpose of correcting a clerical error on which that determination was based.

(5) At any time to effectuate a decision issued under the coverage appeals process.

(c) *Time frame and requirements for reopening initial determinations and redeterminations requested by a party.* (1) A party may request that a contractor reopen its initial determination or redetermination within 1 year from the date of the initial determination or redetermination for any reason.

(2) A party may request that a contractor reopen its initial determination or redetermination within 4 years from the date of the initial determination or redetermination for good cause in accordance with § 405.986.

(3) A party may request that a contractor reopen its initial determination at any time if the initial determination is unfavorable, in whole or in part, to the party thereto, but only for the purpose of correcting a clerical error on which that determination was based. Third party payer error does not constitute clerical error. See § 405.986(c).

(4) A party may request that a contractor reopen an initial determination for the purpose of reporting and returning an overpayment under § 401.305 of this chapter.

(d) *Time frame and requirements for reopening reconsiderations, decisions and reviews initiated by a QIC, ALJ or attorney adjudicator, or the Council.* (1) A QIC may reopen its reconsideration on its own motion within 180 calendar days from the date of the reconsideration for good cause in accordance with § 405.986. If the QIC's reconsideration was procured by fraud or similar fault, then the QIC may reopen at any time.

(2) An ALJ or attorney adjudicator may reopen his or her decision, or the Council may reopen an ALJ or attorney adjudicator decision on its own motion within 180 calendar days from the date of the decision for good cause

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in accordance with § 405.986. If the decision was procured by fraud or similar fault, then the ALJ or attorney adjudicator may reopen his or her decision, or the Council may reopen an ALJ or attorney adjudicator decision, at any time.

(3) The Council may reopen its review decision on its own motion within 180 calendar days from the date of the review decision for good cause in accordance with § 405.986. If the Council's decision was procured by fraud or similar fault, then the Council may reopen at any time.

(e) *Time frames and requirements for reopening reconsiderations, decisions, and reviews requested by a party.* (1) A party to a reconsideration may request that a QIC reopen its reconsideration within 180 calendar days from the date of the reconsideration for good cause in accordance with § 405.986.

(2) A party to an ALJ or attorney adjudicator decision may request that an ALJ or attorney adjudicator reopen his or her decision, or the Council reopen an ALJ or attorney adjudicator decision, within 180 calendar days from the date of the decision for good cause in accordance with § 405.986.

(3) A party to a Council review may request that the Council reopen its decision within 180 calendar days from the date of the review decision for good cause in accordance with § 405.986.

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37703, June 30, 2005; 74 FR 65334, Dec. 9, 2009; 81 FR 7684, Feb. 12, 2016; 82 FR 5108, Jan. 17, 2017]

### § 405.982 Notice of a revised determination or decision.

(a) *When adjudicators initiate reopenings.* When any determination or decision is reopened and revised as provided in § 405.980, the contractor, QIC, ALJ or attorney adjudicator, or the Council must mail its revised determination or decision to the parties to that determination or decision at their last known address. In the case of a full or partial reversal resulting in issuance of a payment to a provider or supplier, a revised electronic or paper remittance advice notice must be issued by the Medicare contractor. An adverse revised determination or decision must state the rationale and basis for the re-

opening and revision and any right to appeal.

(b) *Reopenings initiated at the request of a party.* The contractor, QIC, ALJ or attorney adjudicator, or the Council must mail its revised determination or decision to the parties to that determination or decision at their last known address. In the case of a full or partial reversal resulting in issuance of a payment to a provider or supplier, a revised electronic or paper remittance advice notice must be issued by the Medicare contractor. An adverse revised determination or decision must state the rationale and basis for the reopening and revision and any right to appeal.

[70 FR 11472, Mar. 8, 2005, as amended at 82 FR 5108, Jan. 17, 2017]

### § 405.984 Effect of a revised determination or decision.

(a) *Initial determinations.* The revision of an initial determination is binding upon all parties unless a party files a written request for a redetermination that is accepted and processed in accordance with § 405.940 through § 405.958.

(b) *Redeterminations.* The revision of a redetermination is binding upon all parties unless a party files a written request for a QIC reconsideration that is accepted and processed in accordance with § 405.960 through § 405.978.

(c) *Reconsiderations.* The revision of a reconsideration is binding upon all parties unless a party files a written request for an ALJ hearing that is accepted and processed in accordance with § 405.1000 through § 405.1063.

(d) *ALJ or attorney adjudicator decisions.* The revision of an ALJ or attorney adjudicator decision is binding upon all parties unless a party files a written request for a Council review that is accepted and processed in accordance with § 405.1100 through § 405.1130.

(e) *Council review.* The revision of a Council review is binding upon all parties unless a party files a civil action in which a Federal district court accepts jurisdiction and issues a decision.

(f) *Appeal of only the portion of the determination or decision revised by the reopening.* Only the portion of the initial determination, redetermination, reconsideration, or hearing decision revised

by the reopening may be subsequently appealed.

(g) *Effect of a revised determination or decision.* A revised determination or decision is binding unless it is appealed or otherwise reopened.

[70 FR 11472, Mar. 8, 2005, as amended at 82 FR 5108, Jan. 17, 2017]

#### § 405.986 Good cause for reopening.

(a) *Establishing good cause for reopening.* Good cause may be established when—

(1) There is new and material evidence that—

(i) Was not available or known at the time of the determination or decision; and

(ii) May result in a different conclusion; or

(2) The evidence that was considered in making the determination or decision clearly shows on its face that an obvious error was made at the time of the determination or decision.

(b) *Change in substantive law or interpretative policy.* A change of legal interpretation or policy by CMS in a regulation, CMS ruling, or CMS general instruction, or a change in legal interpretation or policy by SSA in a regulation, SSA ruling, or SSA general instruction in entitlement appeals, whether made in response to judicial precedent or otherwise, is not a basis for reopening a determination or hearing decision under this section. This provision does not preclude contractors from conducting reopenings to effectuate coverage decisions issued under the authority granted by section 1869(f) of the Act.

(c) *Third party payer error.* A request to reopen a claim based upon a third party payer's error in making a primary payment determination when Medicare processed the claim in accordance with the information in its system of records or on the claim form does not constitute good cause for reopening.

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37703, June 30, 2005; 86 FR 65660, Nov. 19, 2021]

#### EXPEDITED ACCESS TO JUDICIAL REVIEW

#### § 405.990 Expedited access to judicial review.

(a) *Process for expedited access to judicial review.* (1) For purposes of this section, a “review entity” means an entity of up to three reviewers who are ALJs or members of the Departmental Appeals Board (DAB), as determined by the Secretary.

(2) In order to obtain expedited access to judicial review (EAJR), a review entity must certify that the Council does not have the authority to decide the question of law or regulation relevant to the matters in dispute and that there is no material issue of fact in dispute.

(3) A party may make a request for EAJR only once with respect to a question of law or regulation for a specific matter in dispute in an appeal.

(b) *Conditions for making the expedited appeals request.* (1) A party may request EAJR in place of an ALJ hearing or Council review if the following conditions are met:

(i) A QIC has made a reconsideration determination and the party has filed a request for—

(A) An ALJ hearing in accordance with § 405.1002 and a decision, dismissal order, or remand order of the ALJ or attorney adjudicator has not been issued;

(B) Council review in accordance with § 405.1102 and a final decision, dismissal order, or remand order of the Council has not been issued; or

(ii) The appeal has been escalated from the QIC to OMHA for an ALJ hearing after the period described in § 405.970(a) and § 405.970(b) has expired, and the QIC does not issue a decision or dismissal order within the timeframe described in § 405.970(e).

(2) The requestor is a party, as defined in paragraph (e) of this section.

(3) The amount remaining in controversy meets the requirements of § 405.1006(b) or (c).

(4) If there is more than one party to the reconsideration, hearing, or Council review, each party concurs, in writing, with the request for the EAJR.

(5) There are no material issues of fact in dispute.