

by CMS in effect, and as CMS understood those legal provisions, at the time the determination or decision was rendered by the contractor. CMS may also direct the contractor to reopen a particular contractor determination or decision in order to implement a final agency decision (as described in §§ 405.1833, 405.1871(b) and 405.1875 of this subpart), a final, non-appealable court judgment § 405.1877, or an agreement to settle an administrative appeal or a lawsuit, regarding the same determination or decision.

(ii) [Reserved]

(2) *Prohibited reopenings.* A change of legal interpretation or policy by CMS in a regulation, CMS ruling, or other interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice established by CMS, whether made in response to judicial precedent or otherwise, is not a basis for reopening a CMS or contractor determination, a contractor hearing decision, a CMS reviewing official decision, a Board decision, or an Administrator decision, under this section.

(3) *Reopening by CMS or contractor of determination currently on appeal to the Board or Administrator.* CMS or a contractor may reopen, on its own motion or on request of the provider(s), a Secretary or contractor determination that is currently pending on appeal before the Board or Administrator.

(i) The scope of the reopening may include any matter covered by the determination, including those specific matters that are appealed to the Board or the Administrator.

(ii) The contractor must send a copy of the notice required under § 405.1887(a) to the Board or to the Administrator, through the Office of the Attorney Advisor, specifically informing that the matter(s) to be addressed by the reopening is currently under appeal to the Board or to the Administrator or is covered by the same determination that is under appeal.

(4) *Reopening of determination within the time for appealing that determination to the Board.* CMS or a contractor may reopen, on its own motion or on request of the provider(s), a Secretary or contractor determination for which no appeal was taken to the Board, but for

which the time to appeal to the Board has not yet expired, by sending the notice specified in § 405.1887(a) of this subpart.

[73 FR 30265, May 23, 2008, as amended at 78 FR 75195, Dec. 10, 2013; 85 FR 59019, Sept. 18, 2020]

§ 405.1887 Notice of reopening; effect of reopening.

(a) In exercising its reopening authority under § 405.1885, CMS (for Secretary determinations), the contractor or the reviewing entity, as applicable, must provide written notice to all parties to the determination or decision that is the subject of the reopening. Notices of—

(1) Reopening by a CMS reviewing official or the Board must be sent promptly to the Administrator.

(2) Contractor reopenings of determinations that are currently pending before the Board or the Administrator must meet the requirements specified in § 405.1885(c)(3) and (c)(4) of this subpart.

(b) Upon receipt of the notice required under § 405.1887(a) of this subpart, the parties to the prior Secretary or contractor determination or decision by a reviewing entity, as applicable, must be allowed a reasonable period of time in which to present any additional evidence or argument in support of their positions.

(c) Upon concluding its reopening, CMS, the contractor or the reviewing entity, as applicable, must provide written notice promptly to all parties to the determination or decision that is the subject of the reopening, informing the parties as to what matter(s), if any, is revised, with a complete explanation of the basis for any revision.

(d) A reopening by itself does not extend appeal rights. Any matter that is reconsidered during the course of a reopening, but is not revised, is not within the proper scope of an appeal of a revised determination or decision (as described in § 405.1889 of this subpart).

[73 FR 30266, May 23, 2008]

§ 405.1889 Effect of a revision; issue-specific nature of appeals of revised determinations and decisions.

(a) If a revision is made in a Secretary or contractor determination or