

(d) If CMS issues a revised or reconsidered NCD, CMS forwards a copy of the revised/reconsidered NCD to the Board.

(e) The Board must take the following actions upon receiving a notice that CMS has withdrawn or revised/reconsidered an NCD under review:

(1) If, before the Board issues a decision, the Board receives notice that CMS has withdrawn the NCD or revised the NCD to completely remove the provision in question, the Board must dismiss the complaint and inform the aggrieved party (ies) who sought the review that he or she or they will receive individual claim review without the retired/withdrawn provisions.

(2) If, before the Board issues a decision, the Board receives notice that CMS has revised the NCD provision in question but has not removed it altogether, the Board must continue the review based on the revised NCD. In this case, CMS must send a copy of the supplemental record to the Board and all parties. In that circumstance, the Board permits the aggrieved party to respond to the revised NCD and the supplemental record.

**§ 426.523 Withdrawing a complaint regarding an NCD under review.**

(a) *Circumstance under which an aggrieved party withdraws a complaint regarding an NCD.* An aggrieved party who filed a complaint regarding an NCD may withdraw the complaint before the Board issues a decision regarding that NCD. The aggrieved party may not file another complaint concerning the same coverage determination for 6 months.

(b) *Process for an aggrieved party withdrawing a complaint regarding an NCD.* To withdraw a complaint regarding an NCD, the aggrieved party who filed the complaint must send a written withdrawal notice to the Board (see § 426.500) and CMS. Supplementing an acceptable complaint with new evidence does not constitute a withdrawal of a complaint, as described in § 426.503.

(c) *Actions the Board must take upon receiving a notice announcing the intent to withdraw a complaint regarding an NCD—(1) NCD reviews involving one aggrieved party.* If the Board receives a withdrawal notice regarding an NCD

before the date the Board issued a decision regarding that NCD, the Board issues a decision dismissing the complaint under § 426.544 and informs the aggrieved party that he or she may not file another complaint to the same coverage determination for 6 months.

(2) *NCD reviews involving joint complaints.* If the Board receives a notice from an aggrieved party who is named in a joint complaint withdrawing a complaint regarding an NCD before the date the Board issued a decision regarding that NCD, the Board issues a decision dismissing only that aggrieved party from the complaint under § 426.544. The Board continues the NCD review if there is one or more aggrieved party who does not withdraw from the joint complaint.

(3) *Consolidated NCD reviews.* If the Board receives a notice from an aggrieved party who is part of a consolidated NCD review withdrawing a complaint regarding an NCD before the date the Board issued a decision regarding that NCD, the Board removes that aggrieved party from the consolidated NCD review and issues a decision dismissing that aggrieved party's complaint under § 426.544. The Board continues the NCD review if there is one or more aggrieved party who does not withdraw from the joint complaint.

**§ 426.525 NCD review.**

(a) *Opportunity for the aggrieved party after his or her review of the NCD record to state why the NCD is not valid.* Upon receipt of the NCD record, the aggrieved party files a statement explaining why the NCD record is not complete, or not adequate to support the validity of the NCD under the reasonableness standard. This statement must be submitted to the Board and CMS, within 30 days (or within additional time as allowed by the Board for good cause shown) of the date the aggrieved party receives the NCD record.

(b) *CMS response.* CMS has 30 days, after receiving the aggrieved party's statement, to submit a response to the Board in order to defend the NCD.

(c) *Board evaluation.* (1) After the aggrieved party files a statement and CMS responds as described in § 426.525(a) and § 426.525(b), or the time for filing has expired, the Board applies