

## § 405.958

(6) A statement of any specific missing documentation that must be submitted with a request for a reconsideration, if applicable;

(7) A statement that all evidence the appellant wishes to introduce during the claim appeals process should be submitted with the request for a reconsideration;

(8) Notification that evidence not submitted to the QIC as indicated in paragraph (b)(6) of this section, is not considered at the OMHA level or further appeal, unless the appellant demonstrates good cause as to why that evidence was not provided previously; and

(9) The procedures for obtaining additional information concerning the redetermination, such as specific provisions of the policy, manual, or regulation used in making the redetermination.

(10) Any other requirements specified by CMS.

(c) *Content of the notice for a full reversal.* For decisions that are full reversals of the initial determination, the redetermination must be in writing and contain—

(1) A clear statement indicating that the redetermination is wholly favorable;

(2) Any other requirements specified by CMS.

(d) *Exception for beneficiary appeal requests.* (1) The notice must inform beneficiary appellants that the requirements of paragraph (b)(8) of this section are not applicable for purposes of beneficiary appeals.

(2) This exception does not apply for appeal requests from beneficiaries who are represented by providers or suppliers.

[70 FR 11472, Mar. 8, 2005, as amended at 82 FR 5107, Jan. 17, 2017]

## § 405.958 Effect of a redetermination.

In accordance with section 1869(a)(3)(D) of the Act, once a redetermination is issued, it becomes part of the initial determination. The redetermination is binding upon all parties unless—

(a) A reconsideration is completed in accordance with § 405.960 through § 405.978; or

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

[70 FR 11472, Mar. 8, 2005, as amended at 74 FR 65333, Dec. 9, 2009]

### RECONSIDERATION

## § 405.960 Right to a reconsideration.

A person or entity that is a party to a redetermination made by a contractor as described under § 405.940 through § 405.958, and is dissatisfied with that determination, may request a reconsideration by a QIC in accordance with § 405.962 through § 405.966, regardless of the amount in controversy.

## § 405.962 Timeframe for filing a request for a reconsideration.

(a) *Timeframe for filing a request.* Except as provided in paragraph (b) of this section and in § 405.974(b)(1), regarding a request for QIC reconsideration of a contractor's dismissal of a redetermination request, any request for a reconsideration must be filed within 180 calendar days from the date the party receives the notice of the redetermination.

(1) For purposes of this section, the date of receipt of the redetermination will be presumed to be 5 calendar days after the date of the notice of redetermination, unless there is evidence to the contrary.

(2) For purposes of meeting the 180 calendar day filing deadline, the request is considered as filed on the date it is received by the QIC.

(b) *Extending the time for filing a request—*(1) *General rule.* A QIC may extend the 180 calendar day timeframe for filing a request for reconsideration for good cause.

(2) *How to request an extension.* A party to the redetermination must file its request for an extension of the time for filing the reconsideration request with its request for reconsideration. A party should include evidence to support the request for extension. The request for reconsideration and request for extension must—

(i) Be in writing;

(ii) State why the request for reconsideration was not filed within the required timeframe; and

(iii) Meet the requirements of § 405.964.

(3) *How the QIC determines whether good cause exists.* In determining whether a party has good cause for missing a deadline to request reconsideration, the QIC applies the good cause provisions contained in § 405.942(b)(2) and (b)(3).

[70 FR 11472, Mar. 8, 2005, as amended at 74 FR 65334, Dec. 9, 2009]

**§ 405.964 Place and method of filing a request for a reconsideration.**

(a) *Filing location.* The request for reconsideration must be filed with the QIC indicated on the notice of redetermination.

(b) *Content of reconsideration request.* The request for reconsideration must be in writing and should be made on a standard CMS form. A written request that is not made on a standard CMS form is accepted if it contains the same required elements, as follows:

- (1) The beneficiary's name;
- (2) Medicare number;
- (3) Specific service(s) and item(s) for which the reconsideration is requested and the specific date(s) of service;
- (4) The name of the party or the representative of the party; and
- (5) The name of the contractor that made the redetermination.

(c) *Requests for reconsideration by more than one party.* If more than one party timely files a request for reconsideration on the same claim before a reconsideration is made on the first timely filed request, the QIC must consolidate the separate requests into one proceeding and issue one reconsideration.

[70 FR 11472, Mar. 8, 2005, as amended at 84 FR 19870, May 7, 2019]

**§ 405.966 Evidence to be submitted with the reconsideration request.**

(a) *Evidence submitted with the request.* When filing a request for reconsideration, a party should present evidence and allegations of fact or law related to the issue in dispute and explain why it disagrees with the initial determination, including the redetermination.

(1) This evidence must include any missing documentation identified in the notice of redetermination, consistent with § 405.956(b)(6).

(2) Absent good cause, failure to submit all evidence, including documentation requested in the notice of redetermination prior to the issuance of the notice of reconsideration precludes subsequent consideration of that evidence.

(b) *Evidence submitted after the request.* Each time a party submits additional evidence after filing the request for reconsideration, the QIC's 60 calendar day decisionmaking timeframe is automatically extended by up to 14 calendar days for each submission. This extension does not apply to timely submissions of documentation specifically requested by a QIC, unless the documentation was originally requested in the notice of redetermination.

(c) *Exception for beneficiaries and State Medicaid Agencies that file reconsideration requests.* (1) Beneficiaries and State Medicaid Agencies that file requests for reconsideration are not required to comply with the requirements of paragraph (a) of this section. However, the automatic 14 calendar day extension described in paragraph (b) of this section applies to each evidence submission made after the request for reconsideration is filed.

(2) Beneficiaries who are represented by providers or suppliers must comply with the requirements of paragraph (a) of this section.

[70 FR 11472, Mar. 8, 2005, as amended at 74 FR 65334, Dec. 9, 2009]

**§ 405.968 Conduct of a reconsideration.**

(a) *General rules.* (1) A reconsideration consists of an independent, on-the-record review of an initial determination, including the redetermination and all issues related to payment of the claim. In conducting a reconsideration, the QIC reviews the evidence and findings upon which the initial determination, including the redetermination, was based, and any additional evidence the parties submit or that the QIC obtains on its own. If the initial determination involves a finding on whether an item or service is reasonable and necessary for the diagnosis or treatment of illness or injury (under section 1862(a)(1)(A) of the Act), a QIC's reconsideration must involve consideration by a panel of physicians

or other appropriate health care professionals, and be based on clinical experience, the patient's medical records, and medical, technical, and scientific evidence of record to the extent applicable.

(b) *Authority of the QIC.* (1) National coverage determinations (NCDs), CMS Rulings, Council decisions designated by the Chair of the Departmental Appeals Board as having precedential effect under § 401.109 of this chapter, and applicable laws and regulations are binding on the QIC.

(2) QICs are not bound by LCDs, LMRPs, or CMS program guidance, such as program memoranda and manual instructions, but give substantial deference to these policies if they are applicable to a particular case. A QIC may decline to follow a policy, if the QIC determines, either at a party's request or at its own discretion, that the policy does not apply to the facts of the particular case.

(3) If a QIC declines to follow a policy in a particular case, the QIC's reconsideration explains the reasons why the policy was not followed.

(4) A QIC's decision to decline to follow a policy under this section applies only to the specific claim being reconsidered and does not have precedential effect.

(5) A QIC may raise and develop new issues that are relevant to the claims in a particular case provided that the contractor rendered a redetermination with respect to the claims.

(c) *Qualifications of the QIC's panel members.* (1) Members of a QIC's panel who conduct reconsiderations must have sufficient medical, legal, and other expertise, including knowledge of the Medicare program.

(2) When a redetermination is made with respect to whether an item or service is reasonable and necessary (section 1862(a)(1)(A) of the Act), the QIC designates a panel of physicians or other appropriate health care professionals to consider the facts and circumstances of the redetermination.

(3) Where a claim pertains to the furnishing of treatment by a physician, or the provision of items or services by a physician, a reviewing professional must be a physician.

(d) *Disqualification of a QIC panel member.* No physician or health care professional employed by or otherwise working for a QIC may review determinations regarding—

(1) Health care services furnished to a patient if that physician or health care professional was directly responsible for furnishing those services; or

(2) Health care services provided in or by an institution, organization, or agency, if that physician or health care professional or any member of the physician's family or health care professional's family has, directly or indirectly, a significant financial interest in that institution, organization, or agency (see the term family member as defined in § 405.902).

[70 FR 11472, Mar. 8, 2005, as amended at 82 FR 5107, Jan. 17, 2017]

**§ 405.970 Timeframe for making a reconsideration following a contractor redetermination.**

(a) *General rule.* Within 60 calendar days of the date the QIC receives a timely filed request for reconsideration following a contractor redetermination or any additional time provided by paragraph (b) of this section, the QIC mails, or otherwise transmits to the parties at their last known addresses, written notice of—

(1) The reconsideration;

(2) Its inability to complete its review within 60 calendar days in accordance with paragraphs (c) through (e) of this section; or

(3) Dismissal.

(b) *Exceptions.* (1) If a QIC grants an appellant's request for an extension of the 180 calendar day filing deadline made in accordance with § 405.962(b), the QIC's 60 calendar day decision-making timeframe begins on the date the QIC receives the late filed request for reconsideration following a contractor redetermination, or when the request for an extension that meets the requirements of § 405.962(b) is granted, whichever is later.

(2) If a QIC receives timely requests for reconsideration following a contractor redetermination from multiple parties, consistent with § 405.964(c), the QIC must issue a reconsideration, notice that it cannot complete its review, or dismissal within 60 calendar days for

each submission of the latest filed request.

(3) Each time a party submits additional evidence after the request for reconsideration following a contractor redetermination is filed, the QIC's 60 calendar day decisionmaking time-frame is extended by up to 14 calendar days for each submission, consistent with § 405.966(b).

(c) *Responsibilities of the QIC.* Within 60 calendar days of receiving a request for a reconsideration following a contractor redetermination, or any additional time provided for under paragraph (b) of this section, a QIC must take one of the following actions:

(1) Notify all parties of its reconsideration, consistent with § 405.976.

(2) Notify the parties that it cannot complete the reconsideration by the deadline specified in paragraph (b) of this section and offer the appellant the opportunity to escalate the appeal to OMHA. The QIC continues to process the reconsideration unless it receives a written request from the appellant to escalate the case to OMHA after the adjudication period has expired.

(d) *Responsibilities of the appellant.* If an appellant wishes to exercise the option of escalating the case to OMHA, the appellant must notify the QIC in writing.

(e) *Actions following appellant's notice.*

(1) If the appellant fails to notify the QIC, or notifies the QIC that the appellant does not choose to escalate the case, the QIC completes its reconsideration following a contractor redetermination and notifies the appellant of its action consistent with § 405.972 or § 405.976.

(2) If the appellant notifies the QIC that the appellant wishes to escalate the case, the QIC must take one of the following actions within 5 calendar days of receipt of the notice or 5 calendar days from the end of the applicable adjudication period under paragraph (a) or (b) of this section:

(i) Complete its reconsideration following a contractor redetermination and notify all parties of its decision consistent with § 405.972 or § 405.976.

(ii) Acknowledge the escalation notice in writing and forward the case file to OMHA.

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37702, June 30, 2005; 74 FR 65334, Dec. 9, 2009; 82 FR 5107, Jan. 17, 2017; 84 FR 19870, May 7, 2019]

**§ 405.972 Withdrawal or dismissal of a request for reconsideration or review of a contractor's dismissal of a request for redetermination.**

(a) *Withdrawing a request.* An appellant that files a request for reconsideration may withdraw its request by filing a written and signed request for withdrawal. The request for withdrawal must—

(1) Contain a clear statement that the appellant is withdrawing the request for reconsideration and does not intend to proceed further with the appeal.

(2) Be received in the QIC's mailroom before the reconsideration is issued.

(b) *Dismissing a request.* A QIC dismisses a reconsideration request, either entirely or as to any stated issue, under any of the following circumstances:

(1) When the person or entity requesting reconsideration is not a proper party under § 405.906(b) or does not otherwise have a right to a reconsideration under section 1869(b) of the Act;

(2) When the QIC determines that the party failed to make out a valid request for reconsideration that substantially complies with § 405.964(a) and (b);

(3) When the party fails to file the reconsideration request in accordance with the timeframes established in § 405.962, or fails to file the request for review of a contractor's dismissal of a redetermination request in accordance with the timeframes established in § 405.974(b)(1);

(4) When a beneficiary or the beneficiary's representative files a request for reconsideration, but the beneficiary dies while the request is pending, and all of the following criteria apply:

(i) The beneficiary's surviving spouse or estate has no remaining financial interest in the case. In deciding this issue, the QIC considers if the surviving spouse or estate remains liable for the services for which payment was denied or a Medicare contractor held

the beneficiary liable for subsequent similar services under the limitation on liability provisions based on the denial of payment for services at issue;

(ii) No other individual or entity with a financial interest in the case wishes to pursue the appeal; and

(iii) No other party to the redetermination filed a valid and timely request for reconsideration under §§ 405.962 and 405.964.

(5) When a party filing for the reconsideration submits a written request of withdrawal to the QIC and satisfies the criteria set forth in paragraph (a) of this section before the reconsideration has been issued; or

(6) When the contractor has not issued a redetermination on the initial determination for which a reconsideration is sought.

(c) *Notice of dismissal.* A QIC mails or otherwise transmits written notice of the dismissal of the reconsideration request to the parties at their last known addresses. The notice states that there is a right to request that the contractor vacate the dismissal action. The appeal will proceed with respect to any other parties that have filed a timely request for reconsideration.

(d) *Vacating a dismissal.* If good and sufficient cause is established, a QIC may vacate its dismissal of a request for reconsideration within 180 calendar days of the date of the notice of dismissal.

(e) *Effect of dismissal.* The dismissal of a request for reconsideration is binding unless it is modified or reversed by an ALJ or attorney adjudicator under § 405.1004 or vacated under paragraph (d) of this section. The dismissal of a request for review of a contractor's dismissal of a redetermination request is binding and not subject to further review unless vacated under paragraph (d) of this section.

[70 FR 11472, Mar. 8, 2005, as amended at 74 FR 65334, Dec. 9, 2009; 82 FR 5107, Jan. 17, 2017; 84 FR 19870, May 7, 2019]

**§ 405.974 Reconsideration and review of a contractor's dismissal of a request for redetermination.**

(a) *Reconsideration of a contractor determination.* Except as provided in § 405.972, upon the basis of the evidence of record, the QIC must issue a recon-

sideration affirming or reversing, in whole or in part, the initial determination, including the redetermination, in question.

(b) *Review of a contractor's dismissal of a redetermination request.* (1) A party to a contractor's dismissal of a request for redetermination has a right to have the dismissal reviewed by a QIC, if the party files a written request for review of the dismissal with the QIC within 60 calendar days after receipt of the contractor's notice of dismissal.

(i) For purposes of this section, the date of receipt of the contractor's notice of dismissal is presumed to be 5 calendar days after the date of the notice of dismissal, unless there is evidence to the contrary.

(ii) For purposes of meeting the 60 calendar day filing deadline, the request is considered as filed on the date it is received by the QIC indicated on the notice of dismissal.

(2) If the QIC determines that the contractor's dismissal was in error, it vacates the dismissal and remands the case to the contractor for a redetermination.

(3) A QIC's review of a contractor's dismissal of a redetermination request is binding and not subject to further review.

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

**§ 405.976 Notice of a reconsideration.**

(a) *Notification to parties—(1) General rules.* (i) Written notice of the reconsideration must be mailed or otherwise transmitted to all parties at their last known addresses, in accordance with the timeframes established in § 405.970(a) or (b).

(ii) The notice must be written in a manner reasonably calculated to be understood by a beneficiary.

(iii) The QIC must promptly notify the entity responsible for payment of claims under Part A or Part B of its reconsideration. If the reconsideration results in issuance of supplemental payment to a provider or supplier, the Medicare contractor must also issue an electronic or paper RA notice to the provider or supplier.

(2) *Overpayment cases involving multiple beneficiaries who have no liability.*

In an overpayment case involving multiple beneficiaries who have no liability, the QIC may issue a written notice only to the appellant.

(b) *Content of the notice.* The reconsideration must be in writing and contain—

(1) A clear statement indicating whether the reconsideration is favorable or unfavorable;

(2) A summary of the facts, including as appropriate, a summary of the clinical or scientific evidence used in making the reconsideration;

(3) An explanation of how pertinent laws, regulations, coverage rules, and CMS policies, apply to the facts of the case, including, where applicable, the rationale for declining to follow an LCD, LMRP, or CMS program guidance;

(4) In the case of a determination on whether an item or service is reasonable or necessary under section 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 regulation 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