

## **§ 402.302**

### **§ 402.302 Basis for reinstatement.**

(a) The initiating agency authorizes reinstatement if it determines that—

(1) The period of exclusion has expired;

(2) There are reasonable assurances that the types of actions that formed the basis for the original exclusion did not recur and will not recur; and

(3) There is no additional basis under title XVIII of the Act that justifies the continuation of the exclusion.

(b) The initiating agency does not authorize reinstatement if it determines that submitting claims or causing claims to be submitted or payments to be made by the Medicare program for items or services furnished, ordered, or prescribed, may serve as a basis for denying reinstatement. This section applies regardless of whether the excluded person has obtained a Medicare provider number (or equivalent), either as an individual or as a member of a group, before being reinstated.

(c) In making a determination regarding reinstatement, the initiating agency considers the following:

(1) Conduct of the excluded person occurring before the date of the notice of the exclusion, if that conduct was not known to the initiating agency at the time of the exclusion;

(2) Conduct of the excluded person after the date of the exclusion;

(3) Whether all fines and all debts due and owing (including overpayments) to any Federal, State, or local government that relate to Medicare, Medicaid, or, where applicable, any Federal, State, or local health care program are paid in full, or satisfactory arrangements are made to fulfill these obligations;

(4) Whether the excluded person complies with, or has made satisfactory arrangements to fulfill, all of the applicable conditions of participation or conditions of coverage under the Medicare statutes and regulations; and

(5) Whether the excluded person has, during the period of exclusion, submitted claims, or caused claims to be submitted or payment to be made by Medicare, Medicaid, and, where applicable, any other Federal health care program, for items or services furnished, ordered, or prescribed, and the

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conditions under which these actions occurred.

(d) Reinstatement is not effective until the initiating agency grants the request and provides notices under § 402.304. Reinstatement is effective as provided in the notice.

(e) A determination for a denial of reinstatement is not appealable or reviewable except as provided in § 402.306.

(f) An ALJ may not require reinstatement of an excluded person in accordance with this chapter.

### **§ 402.304 Approval of request for reinstatement.**

(a) If the initiating agency grants a request for reinstatement, the initiating agency—

(1) Gives written notice to the excluded person specifying the date of reinstatement; and

(2) Notifies appropriate Federal and State agencies, and, to the extent possible, all others that were originally notified of the exclusion, that the person is reinstated into the Medicare program.

(b) A determination by the initiating agency to reinstate an excluded person has no effect if Medicare, Medicaid, or, where applicable, any other Federal health care program has imposed a longer period of exclusion under its own authorities.

### **§ 402.306 Denial of request for reinstatement.**

(a) If a request for reinstatement is denied, the initiating agency provides written notice to the excluded person. Within 30 days of the date of this notice, the excluded person may submit to the initiating agency:

(1) Documentary evidence and a written argument challenging the reinstatement denial; or

(2) A written request to present written evidence or oral argument to an official of the initiating agency.

(b) If a written request as described in paragraph (a)(2) of this section is received timely by the initiating agency, the initiating agency, within 15 days of receipt of the excluded person's request, initiates communication with the excluded person to establish a time and place for the requested meeting.