

#### § 498.4

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(15) A decision by the State survey agency as to when to conduct an initial survey of a prospective provider or supplier.

(e) *Exclusion of civil rights issues.* The procedures in this subpart do not apply to the adjudication of issues relating to a provider's compliance with civil rights requirements that are set forth in part 489 of this chapter. Those issues are handled through the Department's Office of Civil Rights.

[52 FR 22446, June 12, 1987]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 498.3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

#### § 498.4 NFs subject to appeals process in part 498.

A NF is considered a provider for purposes of this part when it has in effect an agreement to participate in Medicaid, including an agreement to participate in both Medicaid and Medicare and it is a—

- (a) State-operated NF; or
- (b) Non State-operated NF that is subject to compliance action as a result of—
  - (1) A validation survey by CMS; or
  - (2) CMS's review of the State's survey findings.

[59 FR 56252, Nov. 10, 1994]

#### § 498.5 Appeal rights.

(a) *Appeal rights of prospective providers.* (1) Any prospective provider dissatisfied with an initial determination or revised initial determination that it does not qualify as a provider may request reconsideration in accordance with § 498.22(a).

(2) Any prospective provider dissatisfied with a reconsidered determination under paragraph (a)(1) of this section, or a revised reconsidered determination under § 498.30, is entitled to a hearing before an ALJ.

(b) *Appeal rights of providers.* Any provider dissatisfied with an initial determination to terminate its provider agreement is entitled to a hearing before an ALJ.

(c) *Appeal rights of providers and prospective providers.* Any provider or prospective provider dissatisfied with a

hearing decision may request Departmental Appeals Board review, and has a right to seek judicial review of the Board's decision.

(d) *Appeal rights of prospective suppliers.* (1) Any prospective supplier dissatisfied with an initial determination or a revised initial determination that its services do not meet the conditions for coverage may request reconsideration in accordance with § 498.22(a).

(2) Any prospective supplier dissatisfied with a reconsidered determination under paragraph (d)(1) of this section, or a revised reconsidered determination under § 498.30, is entitled to a hearing before an ALJ.

(e) *Appeal rights of suppliers.* Any supplier dissatisfied with an initial determination that the services subject to the determination no longer meet the conditions for coverage, is entitled to a hearing before an ALJ.

(f) *Appeal rights of suppliers and prospective suppliers.* (1) Any supplier or prospective supplier dissatisfied with the hearing decision may request Departmental Appeals Board review of the ALJ's decision.

(2) A supplier or prospective supplier dissatisfied with an ALJ decision may request Board review, and has a right to seek judicial review of the Board's decision.

(g) *Appeal rights for certain practitioners.* A physical therapist in independent practice or a chiropractor dissatisfied with a determination that he or she does not meet the requirements for coverage of his or her services has the same appeal rights as suppliers have under paragraphs (d), (e) and (f) of this section.

(h) *Appeal rights for nonparticipating hospitals that furnish emergency services.* A nonparticipating hospital dissatisfied with a determination or decision that it does not qualify to elect to claim payment for all emergency services furnished during a calendar year has the same appeal rights that providers have under paragraph (a), (b), and (c) of this section.

(i) *Appeal rights for suspended or excluded practitioners, providers, or suppliers.* (1) Any practitioner, provider, or supplier who has been suspended, or whose services have been excluded from coverage in accordance with

§ 498.3(c)(2), or has been sanctioned in accordance with § 498.3(c)(3), is entitled to a hearing before an ALJ.

(2) Any suspended or excluded practitioner, provider, or supplier dissatisfied with a hearing decision may request Departmental Appeals Board review and has a right to seek judicial review of the Board's decision by filing an action in Federal district court.

(j) *Appeal rights for Medicaid ICFs/IID terminated by CMS.* (1) Any Medicaid ICF/IID that has had its approval cancelled by CMS in accordance with § 498.3(b)(8) has a right to a hearing before an ALJ, to request Departmental Appeals Board review of the hearing decision, and to seek judicial review of the Board's decision.

(2) The Medicaid agreement remains in effect until the period for requesting a hearing has expired or, if the facility requests a hearing, until a hearing decision is issued, unless CMS—

(i) Makes a written determination that continuation of provider status for the SNF or ICF constitutes an immediate and serious threat to the health and safety of patients and specifies the reasons for that determination; and

(ii) Certifies that the facility has been notified of its deficiencies and has failed to correct them.

(k) *Appeal rights of NFs.* Under the circumstances specified in § 431.153 (g) and (h) of this chapter, an NF has a right to a hearing before an ALJ, to request Board review of the hearing decision, and to seek judicial review of the Board's decision.

(l) *Appeal rights related to provider enrollment.* (1) Any prospective provider, an existing provider, prospective supplier or existing supplier dissatisfied with an initial determination or revised initial determination related to the denial or revocation of Medicare billing privileges may request reconsideration in accordance with § 498.22(a).

(2) CMS, a CMS contractor, any prospective provider, an existing provider, prospective supplier, or existing supplier dissatisfied with a reconsidered determination under paragraph (1)(1) of this section, or a revised reconsidered determination under § 498.30, is entitled to a hearing before an ALJ.

(3) CMS, a CMS contractor, any prospective provider, an existing provider, prospective supplier, or existing supplier dissatisfied with a hearing decision may request Board review, and any prospective provider, an existing provider, prospective supplier, or existing supplier has a right to seek judicial review of the Board's decision.

(4) *Scope of review.* For appeals of denials based on § 424.530(a)(10) of this chapter related to temporary moratoria, the scope of review will be limited to whether the temporary moratorium applies to the provider or supplier appealing the denial. The agency's basis for imposing a temporary moratorium is not subject to review.

(m) *Appeal rights of an individual who is the administrator of a SNF or NF.* An individual who is the administrator of a SNF or NF who is dissatisfied with the decision of CMS to impose sanctions authorized under § 488.446 of this chapter is entitled to a hearing before an ALJ, to request Board review of the hearing decision, and to seek judicial review of the Board's decision.

(n) *Appeal rights of individuals and entities on preclusion list.* (1)(i) Any individual or entity that is dissatisfied with an initial determination or revised initial determination that they are to be included on the preclusion list (as defined in § 422.2 or § 423.100 of this chapter) may request a reconsideration in accordance with § 498.22(a).

(ii)(A) If the individual's or entity's inclusion on the preclusion list is based on a Medicare revocation under § 424.535 of this chapter and the individual or entity receives contemporaneous notice of both actions, the individual or entity may request a joint reconsideration of both the preclusion list inclusion and the revocation in accordance with § 498.22(a).

(B) The individual or entity may not submit separate reconsideration requests under paragraph (n)(1)(ii)(A) of this section for inclusion on the preclusion list or a revocation if the individual or entity received contemporaneous notice of both actions.

(2) If CMS or the individual or entity under paragraph (n)(1) of this section is dissatisfied with a reconsidered determination under paragraph (n)(1) of this

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section, or a revised reconsidered determination under § 498.30, CMS or the individual or entity is entitled to a hearing before an ALJ.

(3) If CMS or the individual or entity under paragraph (n)(2) of this section is dissatisfied with a hearing decision as described in paragraph (n)(2) of this section, CMS or the individual or entity may request Board review and the individual or entity has a right to seek judicial review of the Board's decision.

[52 FR 22446, June 12, 1987, as amended at 57 FR 43925, Sept. 23, 1992; 59 FR 56252, Nov. 10, 1994; 61 FR 32350, June 24, 1996; 73 FR 36462, June 27, 2008; 76 FR 9512, Feb. 18, 2011; 76 FR 5970, Feb. 2, 2011; 78 FR 16805, Mar. 19, 2013; 79 FR 72533, Dec. 5, 2014; 83 FR 16757, Apr. 16, 2018; 84 FR 15844, Apr. 16, 2019]

#### § 498.10 Appointment of representatives.

(a) An affected party may appoint as its representative anyone not disqualified or suspended from acting as a representative in proceedings before the Secretary or otherwise prohibited by law.

(b) If the representative appointed is not an attorney, the party must file written notice of the appointment with CMS, the ALJ, or the Departmental Appeals Board.

(c) If the representative appointed is an attorney, the attorney's statement that he or she has the authority to represent the party is sufficient.

#### § 498.11 Authority of representatives.

(a) A representative appointed and qualified in accordance with § 498.10 may, on behalf of the represented party—

(1) Give and accept any notice or request pertinent to the proceedings set forth in this part;

(2) Present evidence and allegations as to facts and law in any proceedings affecting that party to the same extent as the party; and

(3) Obtain information to the same extent as the party.

(b) A notice or request may be sent to the affected party, to the party's representative, or to both. A notice or

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request sent to the representative has the same force and effect as if it had been sent to the party.

#### § 498.13 Fees for services of representatives.

Fees for any services performed on behalf of an affected party by an attorney appointed and qualified in accordance with § 498.10 are not subject to the provisions of section 206 of Title II of the Act, which authorizes the Secretary to specify or limit those fees.

#### § 498.15 Charge for transcripts.

A party that requests a transcript of prehearing or hearing proceedings or Board review must pay the actual or estimated cost of preparing the transcript unless, for good cause shown by that party, the payment is waived by the ALJ or the Departmental Appeals Board, as appropriate.

[52 FR 22446, June 12, 1987, as amended at 61 FR 51021, Sept. 30, 1996]

#### § 498.17 Filing of briefs with the ALJ or Departmental Appeals Board, and opportunity for rebuttal.

(a) *Filing of briefs and related documents.* If a party files a brief or related document such as a written argument, contention, suggested finding of fact, conclusion of law, or any other written statement, it must submit an original and one copy to the ALJ or the Departmental Appeals Board, as appropriate. The material may be filed by mail or in person and must include a statement certifying that a copy has been furnished to the other party.

(b) *Opportunity for rebuttal.* (1) The other party will have 20 days from the date of mailing or personal service to submit any rebuttal statement or additional evidence. If a party submits a rebuttal statement or additional evidence, it must file an original and one copy with the ALJ or the Board and furnish a copy to the other party.

(2) The ALJ or the Board will grant an opportunity to reply to the rebuttal statement only if the party shows good cause.